

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 04 CR 00911

-against- : U.S. Courthouse

: Brooklyn, New York

MICHAEL SPATARO
CARMINE DeROSS, III

Defendants : January 30, 2006

- - - - - X 10:00 a.m.

BEFORE:

HONORABLE STERLING JOHNSON, JR.
United States District Judge
and a jury

APPEARANCES:

For the Government: ROSLYNN R. MAUSKOPF, ESQUIRE
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
BY: THOMAS JOSEPH SEIGEL
DEBORAH SUE MAYER
Assistant U.S. Attorneys

For the Defendant: THOMAS R. ASHLEY, ESQUIRE
Michael Spataro Robert Treat Center
50 Park Place
Suite 1400
Newark, New Jersey 07102

1 For the Defendant: MICHAEL ROSEN, ESQUIRE
2 Carmine DeRoss, III 61 Broadway
3 Suite 1105
4 New York, New York 10006
5

6 Court Reporter: RONALD E. TOLKIN, RMR
7 Official Court Reporter
8 225 Cadman Plaza East
9 Brooklyn, New York 11201

10 Minutes Taken Stenographically. Transcript Produced
11 By Computer Aided Transcription.
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1 COURT REPORTER: United States of America against
2 Michael Spataro and Carmine DeRoss.

3 Docket Number 04-CR-911.

4 THE COURT: Good morning.

5 MR. SEIGEL: Good morning, Your Honor.

6 Thomas Seigel and Deborah Mayer for the United
7 States.

8 MR. ROSEN: Michael Rosen on behalf of Mr. DeRoss.

9 MR. ASHLEY: Thomas R. Ashley appearing for Michael
10 Spataro.

11 THE COURT: We have a couple of housekeeping
12 matters.

13 MR. SEIGEL: The government would first like to take
14 up the presence of Mr. Frocarro in the courtroom.

15 THE COURT: What is your name?

16 MR. SEIGEL: I am Thomas Seigel.

17 MR. ROSEN: Your Honor --

18 THE COURT: Let him speak.

19 MR. SEIGEL: Your Honor, an order from this Court,
20 an eleven page memorandum and order on December 23rd, Your
21 Honor unequivocally disqualified Mr. Froccaro from
22 representing Carmine DeRoss.

23 Your Honor, despite the clear terms of this Court's
24 authority Mr. Rosen wants to have Mr. Froccaro work on this
25 case still. Because, Your Honor, there is a complete lack of

1 respect for the authority and order of this Court and in fact
2 it is contemptible, Judge.

3 THE COURT: What is Mr. Froccaro doing here?

4 MR. ROSEN: If, Your Honor, please. I wrote a
5 letter to Your Honor asking the Court's indulgence for reasons
6 that I set forth therein and reasons I will proffer to Your
7 Honor. That I need Mr. Froccaro, who will not speak or have
8 anything to do with the conduct of the trial other than to
9 help me. I just want to say to Your Honor that I just really
10 don't after all of these years appreciate standing in front of
11 Your Honor. Your Honor knows that I respect and admire this
12 Court, and hear that my conduct is contemptible.

13 Judge Johnson --

14 THE COURT: Just a second. It is not your conduct
15 so much as the alleged conduct of Mr. Froccaro.

16 MR. ROSEN: I appreciate that, sir.

17 When I came into this case on January 5th, I came
18 with two things in mind. One is that it is a short trial
19 date, and I didn't want to interfere with that date. I took
20 on this responsibility expecting to be assisted. It is not
21 having some one question witnesses or make arguments but help
22 me put this massive thing something.

23 I also came in, Judge, at that time. At that time
24 my wife was recovering from her first dissection and doing
25 pretty well until about the 17th of this month when she

1 reherniated the disc.

2 This may sound tangential. I notified Your Honor's
3 chambers that there may be a problem. She was to undergo
4 potential surgery on Friday. As a family we decided not to do
5 anything to interfere with jury selection because I understand
6 there are 100 or so jurors coming in. This woman, who is
7 suffering greatly decided, and I was there on Friday at the
8 Hospital For Joint Disease, instead of that second surgery to
9 take one of these huge needles in her spine to diminish the
10 pain for the duration, hopefully, of this trial. This is
11 necessitated in addition to my being close to home. Jim
12 Froccaro's office is in my next town. That is where I go. So
13 in case there is a phone call at night and there is nobody to
14 take care of her, I can get home in ten minutes.

15 So I asked the Court. I wrote the letter, not this
16 man who uses this word contempt just so freely, I wrote the
17 letter to this Court respecting the province of this Court
18 that I need, not want where it is a luxury, I need the
19 assistance of this man who was the lawyer before me and
20 lawyers are supposed to help new lawyers coming in, to help me
21 with this trial.

22 He will not cross examine. He will not make
23 objections. He will not go to the side-bar. But will help me
24 as a human being, because I honestly believe that I have
25 helped this Court by not seeking and not trying to derail this

1 trial.

2 It is the first time in my 42 years that I have
3 asked somebody in my family to take a step back when there is
4 a health issue and let this thing proceed. I did notify
5 chambers that there could be a problem. We are going today,
6 Judge Johnson, after I leave here to a very eminent spinal
7 surgeon. That is tonight at 7:30 and, hopefully, he can
8 postpone this surgery until after this trial. But I need
9 help. I don't have the freedom to just stay around all night
10 and work. I need people to help me.

11 Mr. Froccaro, who is like a son to me, I know him
12 since he is nine years old. Who came to my house last year
13 when I had pneumonia in front of Judge Amon, not in from of
14 Judge Amon but I had a case involving Judge Amon, and helped
15 me get through it. He helped me.

16 There is no prejudice to the government. I know he
17 can't cross examine. I know he can't make argument, but he
18 can help a fellow lawyer and not to disrupt the flow of this
19 trial. I just need it. There is this medical situation. I
20 don't control it. I didn't control it. I wish she wasn't
21 like that and I didn't have to stand in front of Your Honor
22 and say this.

23 THE COURT: I hear what you say but the problem is
24 that I have issued an order. It is not your problem, it is
25 Mr. Froccaro's problem. He has been disqualified from this

1 case. Contrary to what my instructions were, he chose to
2 listen to you and involve himself in this case. Every action
3 such as this has a consequence. There will be consequences
4 for Mr. Froccaro's actions. I am telling you he is not to be
5 involved in this case at all. But he still will have to
6 answer for what he has been doing after he had been instructed
7 not to be in this case.

8 MR. ROSEN: Your Honor, not to defend Mr. Froccaro.
9 I elicited his help going through boxes, going through things.
10 I can't do it myself. Like I can't play paddle ball now I
11 can't do all this myself.

12 THE COURT: I have no problem with you. Mr.
13 Froccaro has the problem. It is not me. He is out of this
14 case. That has been settled. It is no issue anymore. We
15 will deal with Mr. Froccaro later on.

16 What is the next issue?

17 MR. SEIGEL: Your Honor, the next issue I would like
18 to bring up is the very late production from the defendant
19 Spataro of documents related to the alibi witness. Your
20 Honor, the first production we got in this case which has been
21 pending for 16 months came on Wednesday night past 8:30. The
22 government has repeatedly asked for documents from Mr.
23 Spataro. They finally produced them five days before trial.
24 We got to see the originals on Thursday night. We are very
25 concerned about the authenticity of these documents.

1 It has to be a deliberate tactic, Judge, because we
2 asked them for documents over and over again. In fact, I
3 wrote a letter to Mr. Ashley on the 9th saying, you know, this
4 case has been pending a long time. We have not received the
5 documents --

6 THE COURT: I saw a letter that you wrote that said
7 that you asked for discovery in November of 2004. You
8 received it on January 25th or thereabouts in 2005.

9 MR. SEIGEL: Correct, Judge. It was 2006, Judge.
10 It was five days ago.

11 MR. ASHLEY: The only obligation that we had to
12 provide discovery with respect to the alibi is when we
13 received specific notice from the government with respect to
14 the times that would be significant.

15 You will remember that there was first an issue with
16 respect to the government telling us that they think the
17 operative time would be from nine to one, and there was an
18 issue with respect to whether or not that was specific enough.
19 Finally, we arrived at a determination that the operative time
20 is 10 to 12.

21 It was only at that time, Your Honor, as soon as we
22 found that out we then submitted a notice of alibi to the
23 government. It was a complete notice of alibi except for Lisa
24 Ida being a person that was with Mr. Spataro at Narrows Body
25 Shop, Your Honor. It indicated where she lived. It indicated

1 exactly what had occurred.

2 Now the government indicates that I was late in
3 providing this discovery. What happened here, of course, is
4 that first of all let me just deal with this issue. There is
5 no real question with respect to the authenticity of these
6 documents. We have a document, Your Honor, and the government
7 has it.

8 THE COURT: Just a second.

9 The government raises an issue. I don't know
10 anything about the authenticity or not. They have raised an
11 issue. It will have to be decided. Don't say there is no
12 question.

13 MR. ASHLEY: I understand. Based from my
14 prospective.

15 THE COURT: From your prospective.

16 MR. ASHLEY: From my prospective, and I would like
17 to simply say this. The document is signed by Ms. Ida, Your
18 Honor. The government has interviewed Ms. Ida. The document
19 will indicate that the document was signed by her. Both of
20 these documents were. Indeed Mr. Spataro was present at this
21 time.

22 The issue with respect to authenticity or Mr.
23 Seigel's statement that he thinks it is a significant question
24 with respect to authenticity, I most respectfully disagree.

25 Mr. Seigel wrote me a letter. The letter was dated,

1 and I can't recall specifically, but I think the letter was
2 dated on January 25th. He wanted copies of the documents. We
3 sent Mr. Seigel copies of the documents. Mr. Seigel then said
4 he wanted to look at the originals. Mr. Torano who is my
5 associate, Your Honor, and who has an office in New York
6 provided for Mr. Seigel to come to his office and he saw the
7 originals. I have the originals here, Your Honor.

8 Certainly these originals document, Your Honor, are
9 the documents that I intend to be provided for Your Honor if
10 you will allow me. There is no relevant question with respect
11 to this. Nor is the government seriously prejudiced, Your
12 Honor. They have Lisa Ida, Your Honor. They can ask Lisa Ida
13 is this your signature.

14 MR. SEIGEL: Your Honor, here is the point. The
15 point that Mr. Ashley doesn't talk about because it is a very
16 important point for the government and that is under Rule
17 16(b) there are reciprocal discovery provisions. If he
18 intends to introduce a document at trial he has to turn that
19 over.

20 If he intended to introduce these documents, we got
21 his notice of the witness related to these documents on
22 December 29th. Why didn't we get those documents the same
23 day? On January 9th I wrote a letter saying, you know, I have
24 not received any documents from you. You have to give
25 reciprocal discovery. Nothing.

1 December 25th I write a letter saying we have now
2 talked to Ms. Ida. We know there are documents you intended
3 to produce, produce them. Still nothing. I filed a motion to
4 preclude the next night. That is when I got the documents.
5 Why the delay? That raises a question in and of itself,
6 Judge. Why the 11th hour? So we can't do an analysis of it.
7 We can't do a handwriting. We can't do forensic ink analysis
8 which we would have done. Obviously, there is a prejudice.
9 I don't want to delay the trial.

10 What I propose is the following remediation for what
11 I think is inappropriate conduct. One: We want the originals
12 so that we can submit them to a forensic document examiner
13 this week. We will not delay the trial. It will be not be
14 destructive testing. It will simply be an analysis of them
15 without any way altering the document.

16 Two: We have asked them, we wrote a letter to them
17 asking them for the entire file related to this woman, Lisa
18 Ida, from Mr. Spataro's business. There is a particular form
19 at issue here. We asked for the five forms before and the
20 five forms after.

21 With that we can probably short circuit the analysis
22 we would otherwise do. We don't have time to do the ink
23 analysis that we would do. We don't have time to do the
24 handwriting exemplars that we would do.

25 If you order them to give us all of the records

1 related to Ms. Ida and the authorization to repair forms, the
2 five before the form at issue and the five after, and let us
3 examine them this week, at least we can go forward when she
4 testifies in the defense case and not be as prejudiced as we
5 have been so far.

6 MR. ASHLEY: Judge, if I may? I came prepared to
7 produce to the government the originals of these documents
8 and, for the record, there is the authorization to repair.
9 There is also a document entitled authorization for collision
10 loss. There is an authorization to tow, Judge, and two of
11 those.

12 I am prepared to give these document, the documents,
13 the originals right now, and I will Your Honor.

14 THE COURT: What about the five forms before and
15 after that they are referring to?

16 MR. ASHLEY: Narrows Body Shop has been closed for
17 Mr. Spataro for about two years now. We are endeavoring to
18 obtain that and that is very difficult. I can't say to the
19 Court that we have the documents in our possession. We are
20 endeavoring to find the documents and provide them, if we can.
21 My client was incarcerated for two years, Your Honor, and it
22 is very difficult for him to provide that.

23 My entire file, I am willing to give them everything
24 that we have. We have this. In addition to that we have a
25 GEICO record, Your Honor, that I obtained. That is

1 essentially the file with respect to this auto accident and
2 Mr. Spataro's involvement in repairing the vehicle.

3 I think certainly, Your Honor, that will certainly
4 suffice with respect to any issue the authenticity at this
5 time of this document. For the record, Your Honor, the
6 document is signed by Lisa Ida. The government can go to Ms.
7 Ida and say, is this your signature? Yes, that is my
8 signature.

9 THE COURT: You will give those documents to the
10 government. You give them the documents before and after. If
11 they are not forthcoming, I will look at the request to
12 preclude using these documents at all.

13 MR. ASHLEY: Your Honor, may I say this?

14 It would be very difficult, Your Honor, and would be
15 very unfair in all due respect, Your Honor, to preclude the
16 use of these document when in fact, Your Honor, the government
17 has indicated that it has the opportunity already and can
18 certainly provide the analysis it needs to cause an
19 identification issue to be no longer an issue.

20 THE COURT: They didn't have the original document,
21 though.

22 MR. ASHLEY: The original documents they had an
23 opportunity to see, Your Honor, and could have had it five
24 days ago.

25 THE COURT: As I said before, you give them the

1 documents five days before and five days after. If it is not
2 sufficient, then I will consider precluding these documents
3 for use.

4 MR. ASHLEY: Yes, Your Honor.

5 I will abide by whatever Your Honor orders.

6 MR. SEIGEL: Your Honor, the last point on that.
7 Obviously, it is a concern to the government that of all forms
8 that are easy to find is this one, but the ones around it are
9 somehow not there. That is another reason why we are
10 concerned about its providence.

11 So what I might suggest to the Court, we don't need
12 to do it now obviously, depending on what they produce, as a
13 104 preliminary hearing having them present the witness who
14 located these documents to say where they were found and what
15 they were with. This can go into the question of
16 authentication. We can do that out of the presence of the
17 jury. That might actually be something that he wants in order
18 to justify its presentation to the Court.

19 I would suggest that if they don't do what Your
20 Honor orders, if they don't, let's revisit the issue of a
21 hearing possibly.

22 MR. ASHLEY: Just so we can be clear here about what
23 he is saying, we are only talking about the documents. We are
24 not talking about the viability of the witnesses to testify.
25 She has an independent recollection without these documents,

1 Your Honor. So that is permitted.

2 THE COURT: I mentioned documents.

3 MR. ASHLEY: Yes, sir, correct.

4 MR. SEIGEL: Your Honor, there is also an issue, and
5 I think this one can be handled easily.

6 THE COURT: Go ahead.

7 MR. SEIGEL: We made a motion to preclude certain
8 lines of cross examination and certain arguments to the jury.
9 Mr. Rosen has currently written a letter saying that he and
10 Mr. Ashley are not going to raise those issues in opening.
11 So they will not become alive to the Court until I anticipate
12 the second witnesses. So at that time, as long as they are
13 going to abide by that now, we don't need to deal with the
14 motion to preclude unless the Court wants to.

15 THE COURT: No. If we don't have to do it, I won't
16 do it.

17 MR. SEIGEL: Okay.

18 Mr. Rosen, we are still on the same agreement on
19 that?

20 MR. ROSEN: I wrote a letter and meant what I said
21 in the letter.

22 MR. SEIGEL: Judge, there is an issue of a subpoena
23 that Mr. Ashley issued to the NYPD. It was returnable today.
24 There is an attorney, Sergeant Cappella from the NYPD here.

25 THE COURT: Come on up Sergeant.

1 MR. SEIGEL: They filed a motion to quash that
2 subpoena and we joined in that motion.

3 THE COURT: As I recall, Mr. Ashley requested a
4 subpoena from me. I think I said that the subpoena was too
5 broad. You were supposed to submit some papers. That was in
6 October of last year. I didn't hear anything at all. The
7 next thing I know is that there was a subpoena. It was not
8 signed by me. That was issued to the New York City Police
9 Department asking, basically, for the investigative file of
10 members of the Colombo family.

11 Is that correct?

12 MR. SEIGEL: The investigative file, of the 1991
13 shooting of Greg Scarpa.

14 MR. ASHLEY: Your Honor, with respect to the
15 subpoena. The subpoena was made returnable for the day of the
16 trial, Your Honor. It was not a subpoena that sought
17 information prior to the time that the trial was to begin.
18 Aside from that, with respect to the subpoena, the subpoena is
19 quite specific. I will tell the Court, if I may, what the
20 purpose of the subpoena is. There has been testimony by Mr.
21 Campanella, Joseph Campanella, with respect to his alleged
22 involvement in a conspiracy to murder one Gregory Scarpa.

23 He has provided a version under oath, Your Honor,
24 with respect to how this incident happened. Now because I
25 remember at least some of the trial, because I tried the case

1 initially. I recall that certainly his version with respect
2 to what happened and the testimony at the trial are divergent.
3 We have no information with respect to what the New York
4 Police Department has --

5 THE COURT: Why didn't you order the transcript of
6 the minutes of that trial?

7 MR. ASHLEY: Your Honor, I do have the transcript of
8 the minutes of the trial, to some extent. I am not saying
9 that I don't. The point is that in addition to that I think
10 it was -- I thought it would be prudent of me to get the
11 actual file which shows the reports of the incident, Your
12 Honor. Which would show just what the police found at the
13 time that they came to the scene.

14 It is my position that that will directly contradict
15 Joseph Campanella, and prove that he is a liar, Your Honor,
16 and prove that he was not present at all. But rather he is
17 making up the story about being somewhere where he was not.

18 For the record, he was never charged or indicted for
19 the offense. Other people were and not Joseph Campanella. I
20 submit, Your Honor, that those records at least if my judgment
21 is correct will show that the incident occurred in a way that
22 is completely different from the way that Campanella has
23 indicated under oath Your Honor at the previous trial.

24 So there is a very good reason for me wanting these
25 records.

1 THE COURT: Let me here the Police Sergeant.

2 COURT REPORTER: May I have your name, sir.

3 SERGEANT CAPPELLO: Sergeant Mike Cappello.

4 C-A-P-P-E-L-L-O. I am representing the New York
5 City Police Department.

6 I spoke to Steven Torano about a week or so ago.
7 When we spoke over the phone he said that the FBI had
8 conducted an investigation with the NYPD regarding this 1991
9 shooting, shooting attempt of Gregory Scarpa.

10 THE COURT: Who is Steven Torano?

11 MR. ASHLEY: He is my assistant.

12 SERGEANT CAPPELLO: Your Honor, the NYPD position
13 and also in the papers that we had submitted to the Court,
14 under Rule 16(a)(2) is that any documents prepared in
15 conjunction with a federal investigation, working with the
16 federal authorities in conjunction with the NYPD should be
17 barred from discovery under Rule 16(a)(2) as reports prepared
18 by a government agent.

19 So the Department's position is that if the U.S.
20 Attorney's Office requests these documents from us we will
21 provide them to the U.S. Attorney's Office. In turn, the U.S.
22 Attorney's Office will provide them to defense counsel if,
23 Your Honor, you feel that these documents do fall under Rule
24 16(a)(2).

25 THE COURT: How can these document be used as

1 evidence in your trial?

2 MR. ASHLEY: Your Honor, what we intend to do is
3 this. First of all, we requested from the United States
4 Attorney's Office additional information with respect to the
5 Greg Scarpa shooting.

6 To get back to your point, Your Honor, these
7 documents I don't know what they will reveal. Assuming that
8 these documents reveal that certainly the incident occurred in
9 a way completely different than the way that the government
10 witness suggests, we will use the documents, one, to decide
11 who to call with respect to disputing that situation. And
12 two, Your Honor, attempt to get the documents into evidence as
13 documents that have been prepared in the ordinary course of
14 business and, therefore, the documents will be relevant to
15 this issue which is the 404(b) enterprise issue.

16 The documents are relevant for one, investigatory
17 purposes. And, two, are relevant to dispute the false version
18 that was given by Mr. Campanella which implicates my client,
19 Your Honor, in a very very very nasty shooting. That would
20 have what we said an extremely unduly prejudicial effect on
21 his ability to get a fair trial.

22 The documents are relevant and go right to the heart
23 of the issue.

24 THE COURT: The motion to quash is granted.

25 What is next?

1 MR. SEIGEL: Thank you, Your Honor.

2 SERGEANT CAPPELLO: Thank you, Your Honor.

3 MR. SEIGEL: Your Honor, I spoke with an attorney at
4 the MDC this morning. They have completed their search to
5 make sure that no one else sought the telephone recordings of
6 Giovanni Floridia pursuant to the Court's order. And no one
7 else did seek them. So they were not preserved.

8 MR. ROSEN: Your Honor --

9 MR. SEIGEL: Then the last issue from the
10 government's point of view is we have a stipulation that the
11 parties agreed to sign.

12 MR. ASHLEY: I don't remember agreeing to sign
13 anything. Mr. Seigel writes me a letter that says, if I don't
14 hear from you I assume that you agree.

15 THE COURT: What is the stipulation about?

16 MR. SEIGEL: This is a stipulation, Your Honor,
17 about eliminating certain minor witnesses from the trial. For
18 example, the dates on the video being the accurate dates. The
19 dates of certain discovery being produced being certain dates.

20 I wrote a letter back in November to both parties
21 saying here is a stipulation. Please let me know, because I
22 know how defense lawyers don't responded to stipulations.
23 Please let me know by a certain date or else I will assume
24 that you agree. I didn't hear from Mr. Ashley. I heard from
25 Mr. Lemole. He made a modification. I modified it and I sent

1 it back out.

2 I then made mention of the stipulation in front of
3 the Court with Mr. Ashley present that we had a stipulation,
4 when I was arguing with the Court in November that we should
5 try it in December.

6 THE COURT: Mr. Ashley said he did not agree to it,
7 so I guess what you will have to do is bring the witnesses in.

8 MR. SEIGEL: All right, Judge.

9 MR. ASHLEY: Your Honor, that is not to say that we
10 may at some point stipulate.

11 THE COURT: Then speak to each other.

12 MR. ASHLEY: Yes, Judge.

13 MR. ROSEN: Not to revisit something that you just
14 ruled on or heard about. I thought Your Honor did direct the
15 government to maintain the MDC tapes.

16 THE COURT: What happened is, as I recall, I did
17 direct them. However, the order never went out from my
18 chambers to the MDC. That could be an error on my part or it
19 could have been lost in the mail.

20 MR. ROSEN: Excuse me, sir. Why would it be an
21 error on your part, you directed Mr. Seigel.

22 MR. SEIGEL: Judge, he wasn't there. Mr. Smith was
23 here, and he laid into me. Your Honor said there was no
24 intentional finding. So I guess this is as desperate as Mr.
25 DeRoss is that we need to do this again. You ruled on this,

1 Judge.

2 THE COURT: What had happened was, as I recall, the
3 government said that the MDC would need an order. I said that
4 I would provide an Order.

5 I have to run back to the other courtroom with my
6 other trial. Okay.

7 (Recess taken at 10:45 a.m.)

8 (Matter continued on the next page.)

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1 THE COURT: Are we ready for the jury?

2 MR. ROSEN: There are some housekeeping matters that
3 I would like to raise.

4 THE COURT: Where is Mr. Ashley.

5 Where is Mr. Ashley?

6 This should last a week to two weeks, the trial?

7 MR. SEIGEL: Your Honor, I would say that if we
8 start the government's evidence tomorrow, and we are ready to
9 start today. If we start tomorrow I would say that our case
10 would rest Monday or Tuesday.

11 Are we sitting Friday, Judge?

12 THE COURT: Yes.

13 MR. SEIGEL: Monday or Tuesday.

14 THE COURT: That all depends if there is an observer
15 on the jury they have to leave by 2:00.

16 MR. SEIGEL: Sure.

17 MR. ROSEN: Can we hold that in abeyance the actual
18 schedule until Mr. Ashley gets here?

19 I have a further request perhaps in light of Your
20 Honor's ruling. Mr. Froccaro and I would like to amplify one
21 thing, I may have to make a request to get some more time to
22 have somebody get me up to speed if Your Honor won't allow me
23 to do that. Let me not do that in his absence.

24 THE COURT: Do you see him agent?

25 SPECIAL AGENT DeSTEFANO: No.

1 THE COURT: Is your client dressed?

2 MR. ASHLEY: Yes. He is dressed, Your Honor.

3 THE COURT: Go ahead.

4 MR. ROSEN: Judge Johnson, I would like to take the
5 opportunity to ask Your Honor to consider an alternative to
6 this situation with Mr. Froccaro.

7 Number one, I want this Court to know that I must
8 work out of his office because I must stay within ten or
9 fifteen minutes of home in the evening when I have nobody to
10 care for my wife.

11 His office is fifteen minutes away and that is where
12 I work. I have been working there for 50 years, but now I
13 must really stay close. I want to represent to Your Honor,
14 and I wrote the letter asking for permission for him to help
15 me, and not to conduct the trial but to help me to get up to
16 speed. Which I think an outgoing counsel is responsible to
17 do. That is all I am asking for you to reconsider and allow
18 him to assist me.

19 We have 10,000 pages of Bates documents. There are
20 4,000 conversations. There is 778 pole camera VHS tapes.
21 This is what I need to get up to speed to probably defend the
22 defendant. It is nothing for me. It is not easy for me.
23 This is what I need for the defendant.

24 We have just received 3500 material. Judge, it is a
25 box. I used to be able to lift it. I can't lift it like that

1 anymore. There is so much.

2 I think, most respectfully, Your Honor disqualified
3 Mr. Froccaro based on allegations 15 years ago someone gave
4 him some money for telephone calls.

5 THE COURT: The bottom line is he is disqualified.

6 MR. ROSEN: Would Your Honor allow him to finish
7 bringing me up to speed. We are not there yet. I worked until
8 1:00 in the morning until these old bones gave in.

9 I don't want to ask for a postponement. I worked so
10 hard even under difficult circumstances.

11 THE COURT: I will not give you a postponement. You
12 said that you were ready.

13 MR. ROSEN: Judge, I thought he was going to help
14 me. I didn't know my wife would get a reherniation of her
15 disc. I need help. I can't do it alone.

16 I have only been standing in this well of this
17 Courthouse for 42 years. If I tell you I need help, I need
18 help. It is not fair to my client.

19 THE COURT: You took this case.

20 Mr. Froccaro was here for two days.

21 MR. SEIGEL: Your Honor, giving them the benefit of
22 the doubt he was here for two weeks. Mr. Lemole was the
23 attorney. Mr. Lemole to everyone's surprise withdrew. Later
24 Mr. DeRoss he doesn't have habeas to everyone's surprise Mr.
25 Lemole withdrew from the case. I didn't argue. He told me he

1 was withdrawing that same day in December, of last December.
2 He said to me I think Jim Froccaro will be representing him.
3 I said he has a conflict. We have to litigate that. He can
4 talk to Lemole who is prior counsel.

5 THE COURT: That is who I suggest that you see.
6 Mr. Froccaro is only there for a brief period of time.

7 MR. ROSEN: If Your Honor's view is that Mr. Lemole
8 is not precluded from helping me, Mr. Froccaro shouldn't be
9 precluded from helping me.

10 THE COURT: Mr. Froccaro only had two weeks on the
11 case. How can he help you?

12 MR. ROSEN: He helps me putting things together, and
13 in files, and getting an sitting and doing digest. I am
14 trying to catch up to speed. The case is 13 months old.

15 THE COURT: You told me when you came in you would
16 be able to try the case. You wouldn't need to be catching up.

17 MR. SEIGEL: That is what he said.

18 MR. ROSEN: I said I would be ready by the 30th to
19 have assistance of people to assist me. That is the God's
20 honest truth. I didn't know that I would have a personal
21 problem, which is horrendous. I am urging and wanting to go
22 forward. I don't see what the prejudice is to the government
23 if someone gets me up to speed. He wants to put on evidence
24 tomorrow. I didn't finish reading the 3500 material.

25 THE COURT: Theoretically, you are not supposed to

1 get the 3500 material until after they testify.

2 MR. ROSEN: I know, Judge. I am asking the Court
3 for help and consideration at the unusual circumstance. It
4 was a short trial date. I permitted myself to do it. I don't
5 want to prejudice this young man at the defense table.

6 THE COURT: You also have co-counsel, Mr. Ashley.

7 MR. ROSEN: I understand that. He has his own case
8 to deal with and issues and so do I. I have a couple of
9 issues I wanted to bring to Your Honor's attention but I
10 beseech this Court really in the interest of justice. Give me
11 a chance to get up to speed.

12 THE COURT: I am not going to let Mr. Froccaro in
13 the case. He is out.

14 MR. ROSEN: Does that mean I can't talk to him about
15 the case?

16 THE COURT: I didn't say that you can't talk to him.

17 MR. SEIGEL: Your Honor, most respectfully, Judge.
18 Mr. Froccaro is still here. He obviously doesn't hear
19 anything that you are saying.

20 MR. FROCCARO: Judge, that is not fair.

21 THE COURT: Just one second. You sit down and you
22 keep quiet, Mr. Froccaro.

23 MR. SEIGEL: Your Honor, a disqualification is a
24 disqualification. So if he sits here and watches the case,
25 what is the difference if he is in this chair of that chair?

1 He will go back and plan the strategy.

2 A disqualification means that you don't work on the
3 case because you have a conflict found by the Court. That
4 means you are out of the case. You are not a little bit out
5 but out.

6 Why he doesn't want to work with Mr. Lemole, I don't
7 know. Mr. Lemole has the documents for a year. I assume that
8 he knows them pretty well. Mr. Froccaro is in the case for
9 two weeks. It is a blink of an eye. Your Honor made a
10 ruling, and they still don't want to accept it.

11 I don't think that Mr. Froccaro should be allowed in
12 the Courtroom, by the way, Your Honor.

13 THE COURT: I am not excluding him from the
14 Courtroom.

15 MR. SEIGEL: During the jury selection I ask that he
16 be excluded.

17 THE CLERK: We can't fit him.

18 THE COURT: He will stand up or do something. We
19 need those seats.

20 Mr. Froccaro is out.

21 MR. ROSEN: Judge, I would just like your permission
22 to be able to talk to him and to work out of his office. I
23 have no other place to work. I have not been to my office
24 since my wife got hurt. I have been maybe six time. I was
25 calling her from cell phones. I just have to stay near my

1 house.

2 THE COURT: I am not giving you any direction
3 telling you that. I said Mr. Froccaro is out of the case.
4 That is it.

5 MR. ROSEN: I don't want to run afoul.

6 THE COURT: You have not run afoul of anything.

7 MR. ROSEN: I want to talk to him.

8 THE COURT: Whatever damage that has been done by
9 Mr. Froccaro has already been done.

10 MR. ROSEN: Judge, I don't want to take your time
11 up. I just want Your Honor to know that I believe that this
12 disqualification doesn't preclude me from talking to him and
13 working in his office.

14 THE COURT: We will not beat a dead horse.

15 Is there anything else that you have?

16 MR. SEIGEL: Judge, it is the government's position
17 if he talks to him about the strategy in the case then he is
18 co-counsel, and that is afoul of your order and it is contempt
19 of your order.

20 Either a disqualification means something or it
21 doesn't.

22 MR. ROSEN: That is disqualified.

23 THE COURT: He is disqualified.

24 If you want to see somebody, see Mr. Lemole. If you
25 want to use his office, I can't stop you from using his

1 office.

2 Next?

3 MR. ROSEN: If Your Honor please, I am concerned
4 about a problem arising in this trial under the case of United
5 States versus Mollica. M-O-L-L-I-C-A. It is a Second Circuit
6 case in 1988. Which I was fortunate enough to have tried and
7 was one of the lawyers on appeal.

8 Judge, there is a very discrete superceding
9 indictment in this case. It is a very discrete period of
10 time. Don't forget this is a superseder. So Mr. Seigel had
11 plenty of time to be very careful on how to draft this. The
12 conspiracy in this case stretches from May of 2001, Judge
13 Johnson, to July 16th, 2001, the day of the shooting of Mr.
14 Campanella.

15 The two substantive counts are specific, July 16th,
16 2001. I understand from the materials and, again, I
17 represented that I have not seen them all, that the government
18 intends to produce evidence far in advance of the period in
19 the conspiracy back to 1999 and far beyond the conspiracy.

20 THE COURT: I don't have a copy of the indictment in
21 front of me. Do you have a copy of the indictment?

22 MR. SEIGEL: Yes, Judge.

23 THE COURT: Is there an enterprise as part of the
24 proof?

25 MR. SEIGEL: Yes, Judge, there is. It is the

1 Colombo family racketeering case.

2 MR. ROSEN: It is not a RICO case.

3 MR. SEIGEL: Here, Your Honor.

4 (Handing to the Court.)

5 MR. ROSEN: Count one begins on page five, Judge.

6 THE COURT: What is your argument?

7 MR. ROSEN: My concern and argument is that I
8 understand that they will try to introduce conversations of
9 Mr. DeRoss hypothetically back in 1999, and then there are
10 some tapes of Mr. Chickie in 2004 and things like that.
11 Under Molicca this is an impermissible constructive amendment
12 if not an actual amendment of what the grand jury chose. I
13 have a right to go to trial on what the grand jury indicted my
14 client on and not two years before and two years after.
15 There is no RICO here. Yes, there is enterprise. Your Honor
16 can see even the background doesn't have a date.

17 The only dates in this case, counts one, two, and
18 three and they are very discrete. Mr. Seigel, a very seasoned
19 prosecutor, knew what he was doing when he went back into that
20 Grand Jury and made a discrete indictment.

21 My concern is that the jury here, maybe there is an
22 opening, and maybe we can defer this. You will hear this in
23 1999 and 2000, and you will hear this in 2004, it is way
24 outside the parameters of this indictment. Again, I commit to
25 Your Honor's reading it. I am sure Your Honor is familiar

1 with the case. But it is Mollica at 849 F.2nd 723. It is a
2 case by the Second Circuit which is still very good law.

3 THE COURT: 732?

4 MR. ROSEN: 723. It is 849 F.2nd 723. I have a
5 copy here but it is marked up.

6 MR. ASHLEY: Your Honor, on behalf of Mr. Spataro we
7 filed a motion seeking to exclude evidence that was beyond the
8 point of the indictment period both before and after, Your
9 Honor. That motion, unfortunately, Your Honor denied, as per
10 the record.

11 THE COURT: Okay.

12 So this issue has been resolved.

13 MR. ASHLEY: Not in the context in which Mr. Rosen
14 has raised.

15 THE COURT: The government will respond.

16 MR. SEIGEL: Your Honor, this is a case involving an
17 attempted murdered and racketeering. It is a Colombo family
18 organized crime case. One of the elements we have to prove is
19 the existence of the enterprise. We have made a 404(b) motion
20 that outlines all of the racketeering proof that we intend to
21 offer, Judge. Your Honor ruled on that and granted it, and
22 noted that this is a case involving a racketeering enterprise,
23 and we are entitled to it.

24 As I am sure you have had many of these cases before
25 you, and Mr. Rosen tried many of them. We are not limited to

1 the period of time, to the specific time charged in the
2 indictment when it is a racketeering case. We are not limited
3 in any way by that. The jury has to find those specific
4 crimes in our proof in a case where the Colombo family is
5 alleged. We are entitled to --

6 THE COURT: I thought that I already ruled on this.

7 MR. SEIGEL: You have.

8 THE COURT: I will allow this case to come in, and
9 then I will let you know.

10 MR. ROSEN: Thank you, sir.

11 THE COURT: What else?

12 MR. ROSEN: The other issue that I would like to at
13 least raise at this point is under the case of United states
14 versus McKeon. I am sure, again, Your Honor is familiar with
15 that. It is a Second Circuit case. A case in which the
16 Court -- I will give you the citation.

17 It is M-C- K-E-O-N.

18 It is the Second Circuit 738 F.2nd 26. McKeon I
19 think was in front of Judge Sifton or Judge Platt, initially.
20 It permitted the government to put before the jury an
21 admission by an attorney in a prior case with the same
22 defendant, that he took a certain position. And Judge Platt
23 and, of course, the Second Circuit said it was appropriate.
24 It is an admission of an attorney acting as an agent for the
25 client, as Mr. Seigel is an agent of the United States.

1 Under McKeon I will seek with Your Honor's
2 permission, obviously, to put in the government's statements
3 made to this Court that without this new witness Floridaia,
4 they don't have a case. They need, and I will cite you the
5 page before my learned adversary gets too stressed, saying
6 that they needed this Floridaia to make this case against these
7 two defendants. I say it is an admission made to Your Honor
8 that they don't have a case without Floridaia.

9 THE COURT: What is the purpose of having a jury
10 then?

11 MR. ROSEN: Pardon me?

12 THE COURT: What is the purpose of having a jury?

13 MR. ROSEN: Well, you got some credibility issues
14 that a jury can determine. If you look at the memo submitted
15 to Your Honor where they say, however, following the Chickie
16 trial --

17 THE COURT: I want to select this jury but let me
18 hear you respond to it.

19 MR. SEIGEL: It is silly. That is silly. He wants
20 to get what I said to you in pretrial litigation, and say
21 don't do your job, think of what Mr. Seigel thinks and make
22 that your thought. That is completely inappropriate. It is
23 ridiculous for him to say he wants to introduce to the jury
24 some comment. I don't know what comment that he is talking
25 about. It is some comment that I said about the witnesses'

1 testimony.

2 They are the judges of credibility. We put on our
3 case and they decide. They shouldn't be influenced by what
4 Your Honor thinks or Mr. Rosen thinks or what I think.

5 THE COURT: The case will be decided based upon the
6 evidence, which is the testimony of witnesses and the
7 documents that I admit into evidence. Whatever the lawyers
8 say is not evidence.

9 MR. ROSEN: I want to put that in evidence. That is
10 the point of McKeon. The Second Circuit allowed it.

11 THE COURT: I will look at the case.
12 Whatever lawyers say is not evidence.

13 Next?

14 MR. ROSEN: I think I understand that after all of
15 this time. The distinction is that an admission is evidence
16 if the Court allows it. That is all that I am saying.

17 MR. ASHLEY: Your Honor, so we are clear on that
18 point.

19 THE COURT: I want to select the jury now.

20 MR. ASHLEY: I understand that.

21 It doesn't preclude us from arguing that when they
22 brought the initial indictment against DeMartino and Floridia
23 that they had this information with respect to the telephone
24 calls. They chose not to indict Spataro. And we --

25 THE COURT: I am not going to allow that.

1 MR. ASHLEY: We can't argue that?

2 THE COURT: No.

3 He will stand or fall based upon the evidence
4 presented to support the indictment. There are three counts.
5 That is it.

6 Anything else?

7 MR. ROSEN: Yes, sir.

8 I would like to ask this. I know you want to select
9 the jury. I am a little puzzled. I would like to find out
10 through Your Honor when these MDC tapes were destroyed. I am
11 just puzzled. The government would know.

12 THE COURT: Speak to them.

13 MR. ROSEN: Next.

14 I would like to make a demand. I know that
15 telephone records will be very important in this case from
16 what I understand from the other case.

17 I would just like to make a demand that if the
18 government has my client's beeper records, which I can't get
19 them and we have tried. My understanding is that the
20 government has subpoenaed them, and I think they would be
21 Brady. If they have them, they can tell us and I will make
22 the demand.

23 THE COURT: You say his telephone beeper calls are
24 exculpatory?

25 MR. ROSEN: They could be.

1 THE COURT: I can't agree on that.

2 MR. ROSEN: Let me know if they have them.

3 THE COURT: Speak to the government.

4 MR. ROSEN: Okay, I will speak to them.

5 THE COURT: Bring the jury in, Augie.

6 (Whereupon the jury selection took place at 11:40

7 p.m.)

8 (Matter continued on the next page.)

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1 THE COURT: Good morning ladies and gentlemen, my
2 name is Judge Johnson. I am a Judge here in the Eastern
3 District of New York. The Eastern District is comprised of
4 Staten Island, Brooklyn, Queens, Nassau and Suffolk County.
5 We are here to select a jury in a criminal case. We select
6 jurors from one of those five boroughs.

7 Anyone here who does not live in either one of these
8 five boroughs?

9 (No response.)

10 THE COURT: To become a juror you must be an
11 American citizen and understand English. Anyone who does not?

12 (No response.)

13 THE COURT: I would like to preface my remarks by
14 saying that I think that we live in the greatest country in
15 the world. Just like any family we have our faults. It does
16 not take much to be an American citizen. The country doesn't
17 ask too much of you.

18 Every April 15th we all must give money. You do and
19 I do. Everyone here who makes a living gives money.
20 Sometimes we are called into service. I served in the
21 service, some of you might have served in the service.

22 The third thing that sometimes we are called to do
23 is to serve on a jury. Now, I have been called for jury duty
24 in the state system. I went down there and I wanted to serve
25 but they wouldn't take me. I want to say that no one will be

1 excused from jury duty unless I find a legally sufficient
2 reason to excuse them.

3 Now, I will be addressing myself to the people
4 seated to my right in the jury box, but I say to you that
5 everything that I say goes for you who are sitting out there
6 in the audience. Because if, for some reason, I find that I
7 am going to excuse someone then one of you in the audience
8 will sit here in this jury box.

9 I am also going to make some statements to you that
10 are very very important. A person has been, or two people
11 have been indicted. An indictment is a piece of paper that
12 brings us all here. An indictment accuses a person of having
13 committed a crime. The person cannot be convicted of the
14 crime unless the government who accuses them of having
15 committed a crime sustains its burden of proving there is
16 guilt beyond a reasonable doubt. You have heard me mention
17 this many times before.

18 I will explain to you what a reasonable doubt is.
19 How do they do that? They do that through what we call
20 evidence. Evidence is sworn testimony of witnesses who will
21 take this stand, who'll be sworn, and they will give their
22 story. For that reason, whatever the lawyers say is not
23 evidence. What the prosecutor says is not evidence. What the
24 defense counsel says is not evidence. Even what I say is not
25 evidence.

1 What is evidence is the testimony of the witnesses
2 and whatever exhibits that I allow in. One of the lawyers
3 will say I move this into evidence. There might be an
4 objection, might not be an objection. Then I would say, yes,
5 this is evidence. So you consider only the documents or the
6 exhibits that I allow into evidence and the sworn testimony of
7 the witnesses.

8 Remember, when a lawyer asks questions, whether it's
9 a prosecutor or a defense counsel it is not the questions that
10 is evidence, it is the answers that are given that is
11 evidence.

12 Now, I also would like to explain to you, and I
13 apologize in the beginning, I have another jury out. I tried
14 another case. Sometimes there might be a couple of questions
15 and I might have to run out for a couple of minutes, I beg
16 your indulgence and I'll come right back. Just to inform you.

17 All of you will have numbers. I will be asking you
18 some questions, where you live. I don't want your address.
19 I just want the neighborhood. This is a case involving
20 assault, what is it?

21 MR. SEIGEL: Your Honor, there are three charges.

22 THE COURT: There are three counts of indictment,
23 three counts to the accusation. It's a case involving
24 organized crime. I will give the indictment to you when you
25 go in to deliberate, those who are chosen. There are three

1 counts. One is conspiracy to murder in the aid of
2 racketeering. One count is assault with a dangerous weapon.
3 The third count is possessing a firearm.

4 It should a brief trial. What is it, a week or two
5 weeks.

6 MR. SEIGEL: I think that's right, Your Honor.

7 THE COURT: A week to two weeks.

8 Remember, I didn't tell you this, the defendants
9 have been indicted. They have been accused of a crime, that's
10 why we're here. Under our system of laws, if I didn't say it
11 before I will say it now and I will probably say it many
12 times, a person who is accused of crime in our system of
13 justice is presumed to be innocent. That presumption remains
14 with that defendant or defendants up until, if ever, the
15 government proves its case beyond a reasonable doubt.

16 Now, I am going to be asking you some general
17 questions. Then I will ask you some specific questions.

18 THE CLERK: I have to swear them in first.

19 THE COURT: Will everyone rise.

20 THE CLERK: Raise your right-hand.

21 (Prospective jurors sworn to tell the truth.)

22 A JUROR: Yes.

23 THE COURT: Now, as I said before this is an
24 accusation. There are three counts or three alleged crimes
25 that were committed. The first thing that I would like to ask

1 you -- as I said, all of you will have numbers. This case
2 might get some press so no one knows who the jurors are. You
3 are not to speak to anyone. You might be walking back and
4 forth through the courtroom. You might see some of the
5 litigants in the hallway, such as myself. Some of them might
6 not speak to you, I will always say hello to you. This is
7 because we want to keep you impartial.

8 The first thing that I would like to mention is that
9 this case is brought by the United States Attorney for the
10 Eastern District of New York. The United States Attorney's
11 name is Ms. Roslyn Mauskopf. Anyone know Ms. Mauskopf?

12 (No response.)

13 THE COURT: If you have a response to any of the
14 questions that I ask, will you please raise your hand and say,
15 Number 16 or Number 2 and I will speak to you. We do this
16 because everything in this case is being transcribed by the
17 Court Reporter. He knows who I am but he does not know who
18 you are.

19 Ms. Mauskopf is the U.S. Attorney and she has
20 assistants working for her. The assistant responsible for
21 trying this case is Mr. Thomas Siegel. Please stand.

22 MR. SEIGEL: Hello.

23 THE COURT: Is this Ms. Deborah Mayer?

24 MS. MAYER: Yes, Your Honor.

25 THE COURT: Anyone know Mr. Siegel or Ms. Mayer.

1 (No response.)

2 THE COURT: I am terrible with names. I am bad with
3 names. I forget my kids' names.

4 Seated at the table with them, to Ms. Mayer's right
5 is an FBI agent.

6 MR. SEIGEL: This is Special Agent James DeStefano
7 and a paralegal specialist from our office, Kathryn Hudak.

8 THE COURT: Does anyone know this gentleman or this
9 lady?

10 (No response.)

11 THE COURT: Does anyone know anyone in the FBI or
12 the Department of Justice?

13 JUROR 6: Number 6.

14 THE COURT: We will just do the ones in the front,
15 28 first. Who raised their hand? The front row. Number 3.

16 JUROR 6: I am Number 6.

17 THE COURT: Who do you know?

18 JUROR 6: I know a few people. I used to work in
19 the joint task force.

20 THE COURT: Joint terrorist task force or the DEA
21 task force?

22 JUROR 6: Terrorist task force.

23 THE COURT: At 26?

24 JUROR 6: Yes, sir.

25 THE COURT: How long ago was that?

1 JUROR 6: I left the task force in '95.

2 THE COURT: What are you doing now?

3 JUROR 6: I am retired from the Police Department.

4 I am working at a university.

5 THE COURT: You are a police officer?

6 JUROR 6: I am a retired Lieutenant.

7 THE COURT: The fact that you do have this law
8 enforcement background, would this impair your ability to
9 deliberate fairly and impartially in this case?

10 JUROR 6: I have worked on organized crime matters.
11 So I don't know what's going to come up.

12 THE COURT: Would it impair your ability to -- my
13 question is, can you be fair and impartial?

14 JUROR 6: I will try to be.

15 THE COURT: You left in '95?

16 JUROR 6: I left the task force in '95 and left the
17 NYPD in 2000.

18 THE COURT: Where did you go after you left the task
19 force?

20 JUROR 6: I worked for internal affairs; one of the
21 units that I worked in. I also worked in the transit bureau.

22 THE COURT: What are you doing in the college that
23 you are working in now?

24 JUROR 6: I am a director of public safety.

25 THE COURT: Will this impair your ability to

1 deliberate fairly and impartially?

2 JUROR 6: I would try to be fair and impartial.

3 THE COURT: You got to be a little stronger than
4 that. Everybody comes here they have a clean slate. Two
5 defendants are charged with a crime. They are presumed to be
6 innocent. Like I said before, the government must prove the
7 guilt beyond a reasonable doubt. We are looking for people
8 who would be reasonable, fair and impartial. And base their
9 decision solely on the evidence, testimony and the exhibits.

10 Can you do that.

11 JUROR 6: Yes.

12 THE COURT: Who else in the first row?

13 JUROR 3: Me.

14 THE COURT: You are Number 3?

15 JUROR 3: Number 3. Do you want someone that knows
16 someone.

17 THE COURT: No. We want someone who is fair and
18 impartial. I wanted to know did you know someone, and if you
19 did know them can you be fair and impartial?

20 JUROR 3: You're saying know someone who works for
21 law enforcement?

22 THE COURT: Yes.

23 JUROR 3: Present or past?

24 THE COURT: Present or past.

25 JUROR 3: Okay. A nephew.

1 THE COURT: What does your nephew do or did?

2 JUROR 3: Special Agent, DEA, in charge.

3 THE COURT: In charge?

4 JUROR 3: Yes.

5 THE COURT: When you say in charge was it the New
6 York office?

7 JUROR 3: First it was Detroit and then it was the
8 New York office. In Manhattan I think it was.

9 THE COURT: How long ago was that?

10 JUROR 3: Maybe five years. He is retired now.

11 THE COURT: He's retired?

12 JUROR 3: Yes.

13 THE COURT: What does he do?

14 JUROR 3: He is working in security.

15 THE COURT: For a big company?

16 JUROR 3: Yes.

17 THE COURT: I think I probably know him. The fact
18 this is your son --

19 JUROR 3: No, my nephew. My brother's son.

20 THE COURT: The fact that your nephew did work for
21 the DEA could you be fair and impartial in this case if you
22 were chosen?

23 JUROR 3: Definitely.

24 THE COURT: Who else?

25 (No response.)

1 THE COURT: All right. Now, the defendants in this
2 case are two men. One is Michael Spataro. Will you please
3 stand up.

4 (Mr. Spataro stands up.)

5 THE COURT: And Carmine DeRoss. You can stand up.

6 (Mr. DeRoss stands up.)

7 THE COURT: Does anyone know, either one of these
8 gentlemen?

9 (No response.)

10 THE COURT: They are represented by Mr. Ashley.
11 Anyone know Mr. Ashley?

12 (No response.)

13 THE COURT: And Mr. Rosen. Anyone know Mr. Rosen?

14 (No response.)

15 THE COURT: And seated in-between them?

16 MR. ASHLEY: Steven Torrano, who will be assisting
17 me in the case.

18 THE COURT: Anyone know Mr. Torrano?

19 (No response.)

20 THE COURT: Okay. The witnesses, the government's
21 witnesses, and remember, as I say or I didn't say, that a
22 person is presumed to be innocent if they are charged with a
23 crime. The defendants don't have to do anything at all. You
24 can't hold that against them. They don't have to make an
25 opening statement. They have don't have to make a closing

1 argument. They don't have to examine the witnesses. They
2 don't have to do anything at all because they are presumed to
3 be innocent.

4 Now, the government's witnesses will be a man by the
5 name of Joseph Campanella, James DeStefano, Giovanni Floridia,
6 Gary Pontecorvo, Silvio Salome and David Williams.

7 Do any of you know any of these gentlemen?

8 (No response.)

9 THE COURT: Now, there are names that are likely to
10 come up during the trial. I would like to know if you know
11 any of these people. Vincent Aloï, Benjamin Aloï, Joseph
12 Amato, Patty Amato, Joseph Ambrosino, Vincent Angellina, Carlo
13 Antonio, Joseph Baudanza, Carmine Baudanza, John Baudanza,
14 Joel Cacace, Dino Calabro, Ronald Calder, Ronald Califano,
15 Joseph Campanella, Frank Campanella.

16 If you know any of these people raise your hand and
17 I will stop.

18 Frank Campione, Richard Capichano, Richard Cappa,
19 Thomas Cappa, Benjamin Castellazzo, Giovanni Cerbone, William
20 Cutolo, Jr., William Cutolo, Sr., Robert D'Onfrio, Vincent
21 DeMartino, Michael DeMicco, John DeRoss, Luca DiMatteo,
22 Dominick Dionisio, Michael Donato, Vincent Febbraro, Giovanni
23 Floridia, Michael Franzese, John Franzese, Salvatore Fusco,
24 Sr., and Salvatore Fusco, Jr., Joseph Gambale, Thomas Geoli,
25 Ralph Guccione, Frank Guerra, Joseph Ianacci, Frank Ianacci,

1 James LaForte, Joseph LaForte, Gennaro Langella, Frank Leto,
2 Ralph Lombardo, Salvatore Michiotta, Thomas Musso, Vincent
3 Orena, Vincent Paladino, Carl Panarella, Charlie Panarella,
4 Theodore Persico, Jr., Theodore Persico, Sr., Alphonse
5 Persico, Alphonse "Allie Boy" Persico, Carmine Persico, Daniel
6 Persico, Sean Persico, Lawrence Persico, Joseph Petillo,
7 Thomas Petrizzo, Ralph Piccirillo, Salvatore Profaci, Vincent
8 Ricciardo, Paul Rizzuto, Andrew Russo, Silvio Salome, Joseph
9 Saponaro, John Saponaro, Gregory Scarpa, Jr., and Gregory
10 Scarpa, Sr., Gabe Scianna, James Scianna, Joseph Scopo,
11 Michael Sessa, Carmine Sessa, Larry Sessa, James Spitalere,
12 Robert Tarantola and George Tropiano.

13 Anyone know any of these people?

14 (No response.)

15 THE COURT: Any of you had any training or
16 experience in telephone or cellular telephone business?

17 (No response.)

18 THE COURT: Does anyone know, and I asked this
19 question, anyone that works for law enforcement; FBI, police
20 department, Secret Service?

21 JUROR 27: Yes.

22 THE COURT: If you could come up here. The number?

23 JUROR 27: 27. I work for CUNY as a safety officer.

24 THE COURT: Because you are a safety officer, would
25 that impair your ability to deliberate fairly and impartially

1 in this case if you were chosen?

2 JUROR 27: No.

3 JUROR 25: Number 25. My mother is a state
4 university police officer.

5 THE COURT: Would that impair your ability to
6 deliberate fairly and impartially in this case if you were
7 chosen?

8 JUROR 25: No.

9 THE COURT: Yes?

10 JUROR 20: My father worked in various precincts,
11 New York City Police Department. He worked in intelligence.

12 THE COURT: The fact that he was a police officer,
13 would that impair your ability to deliberate fairly and
14 impartially if you were chosen?

15 JUROR 20: It may.

16 THE COURT: It may?

17 JUROR 20: Yes.

18 THE COURT: The other thing that I want to tell you
19 ladies and gentlemen, is the fact that if you were chosen you
20 will not be able to discuss this case with anyone; with your
21 wife, your husband or significant other. You can't even
22 discuss it with each other until the case is all over. Then I
23 will tell you now, you can discuss the case.

24 What will happen is that there will be an opening
25 statement, where the government will tell you what the case is

1 all about. What they intend to prove. The defense, if they
2 want to, can make an opening statement. They will say what
3 the case is about. What is lacking, whatever they want to
4 say, but they don't have to say anything. Then there will be
5 testimony from witnesses. There will be direct examination
6 then there will be cross-examination. After that's all over,
7 there will be closing arguments. As I say, the government
8 will tell you what they have proved, what the case is all
9 about. The defendant can say they didn't prove anything at
10 all.

11 After that I will read to you what the law is. I
12 will explain such things as reasonable doubt. Then you will
13 have the case. I would say, now you can discuss it with each
14 other. As I said before, all we're asking for is that we find
15 people who can be fair and impartial, with the understanding
16 that the defendants who are sitting here today are accused of
17 a crime and they are presumed to be innocent.

18 I ask you again, can you do this; be fair and
19 impartial?

20 JUROR 20: I can't say that for certain, no.

21 THE COURT: We will send him back down to the jury
22 room.

23 We will put you on another jury.

24 THE CLERK: What number are you, sir?

25 JUROR 20: 20.

1 THE CLERK: Please go back downstairs.

2 Juror Number 29.

3 THE COURT: Have you heard my questions, sir?

4 JUROR 29: Yes, I have.

5 THE COURT: Any responses?

6 JUROR 29: I know someone in law enforcement.

7 THE COURT: Who is that?

8 JUROR 29: My nephew.

9 THE COURT: What agency is he with?

10 JUROR 29: The FBI.

11 THE COURT: Where does he work?

12 JUROR 29: He comes to this building. That is all
13 that I know.

14 THE COURT: The fact that he is an agent, would that
15 impair your ability to deliberate fairly and impartially in this
16 case if you were chosen?

17 JUROR 29: No.

18 THE COURT: Have you or your family, or anybody that
19 you know, ever been involved in or a target of a criminal
20 investigation? Anybody?

21 (No response.)

22 THE COURT: Any of you ever been a victim of a
23 crime? Let me go to the second row, who is that that raised
24 their hand? We will go to the first hand.

25 JUROR 6: Number 6. A member of my family was

1 indicted on a criminal charge.

2 THE COURT: How long ago was that?

3 JUROR 6: 20 years. Maybe 25.

4 THE COURT: Was the case resolved?

5 JUROR 6: That case was resolved and that same
6 member of my family was indicted two other times.

7 THE COURT: The fact that you have had this
8 experience with someone in your family, would that impair your
9 ability to deliberate fairly and impartially in this case if
10 you were chosen?

11 JUROR 6: No.

12 THE COURT: Who else, the number?

13 JUROR 13: 13. I was strangled, seven months
14 pregnant and almost died.

15 MR. ROSEN: I'm sorry?

16 THE COURT: She was strangled, she was seven months
17 pregnant and almost died.

18 THE COURT: Did they apprehend the person who did
19 this?

20 JUROR 13: They did.

21 THE COURT: Was the case resolved?

22 JUROR 13: Yes.

23 THE COURT: The fact that you were a victim of a
24 crime, would that impair your ability to deliberate fairly and
25 impartially in this case if you were chosen?

1 JUROR 13: No.

2 THE COURT: Next?

3 JUROR 22: 22. Three of my family members were
4 murdered and nothing was done.

5 THE COURT: I'm sorry to hear about that. How long
6 ago was that, ma'am?

7 JUROR 22: Two of my cousins 20 years ago and a
8 nephew was 13 years ago.

9 THE COURT: Would this impair your ability to
10 deliberate fairly and impartially in this case if you were
11 chosen?

12 JUROR 22: I don't think that I would be able to.

13 THE COURT: Where did this occur?

14 JUROR 22: Brooklyn.

15 THE COURT: All right. I understand. I'm sorry
16 about that. Augie?

17 THE CLERK: Your number?

18 THE COURT: She's Number 22.

19 JUROR 22: 22.

20 THE CLERK: Number 22. Okay. You can go back to
21 the central jury room.

22 THE CLERK: Juror Number 30 will take the seat of
23 Juror Number 22.

24 THE COURT: Have you heard my questions?

25 JUROR 30: Which?

1 THE COURT: All of the questions that I have asked.

2 JUROR 30: Yes.

3 THE COURT: Any response to those questions?

4 JUROR 30: I have no problem.

5 THE COURT: I guess that you watch television, a lot
6 of the detective shows, do you have any preconceived notions
7 of what law enforcement should be doing based upon those
8 shows?

9 JUROR 30: I don't believe so.

10 THE COURT: There will be, I understand, wiretaps.
11 Or recordings, tape recordings?

12 MR. SEIGEL: Both, Judge.

13 THE COURT: Wiretaps and tape recordings. Does
14 anybody have any problem with court authorized -- are they
15 court authorized?

16 MR. SEIGEL: Yes, Judge, they were approved by a
17 Judge.

18 THE COURT: Does anybody have any problems with
19 court authorized wiretaps used as evidence?

20 (No response.)

21 THE COURT: Some of the witnesses that are going to
22 be called by the government have past criminal records. They
23 are not nice records, some involving murder, conspiracy,
24 extortion and other crimes. These witnesses have pled guilty
25 of such crimes and are testifying pursuant to a agreement with

1 the government. These witnesses are hoping that their
2 cooperation will result in a reduced sentence for some of
3 them.

4 Do any of you have any problem with that?

5 (No response.)

6 THE COURT: Under the law the question of
7 punishment, if any, is relegated to the Judge, me. Do you
8 have any problems with that?

9 (No response.)

10 THE COURT: Another thing that I will instruct you
11 later on, that there will be witnesses who testify in this
12 case who are members of law enforcement. Do you believe that
13 law enforcement -- would you believe the testimony of law
14 enforcement officials or that of another witness?

15 (No response.)

16 THE COURT: I will tell you, as a matter of law,
17 that law enforcement witnesses are just like any other
18 witnesses. Another thing, too, I explained to you that under
19 our system of law a defendant does not have to testify and you
20 cannot hold that against him. Under our system of law if you
21 are accused of a crime the government bears the burden. Bears
22 the burden of proving that guilt beyond a reasonable doubt.

23 Anybody have any problems with that?

24 (No response.)

25 The other thing is that, do you have any problem

1 with not convicting a person who is associated with someone
2 who may be guilty of a crime but he, himself, is not guilty of
3 any crime. He is he -- has not been proven guilty of any
4 crime.

5 Guilt by association, do you have any problem with
6 that?

7 (No response.)

8 THE COURT: You must consider the evidence against
9 each individual defendant and make a determination on each
10 individual defendant on each individual count. There are
11 three counts.

12 Do you understand that?

13 (No response.)

14 THE COURT: Do you have any problems with that?

15 (No response.)

16 THE COURT: Now, you are going to hear testimony,
17 you might hear testimony that one or more of the defendants
18 has a relative who is supposedly a member of organized crime.

19 Will you be able to follow the court's instruction,
20 my instructions, that such a relationship is not evidence of a
21 persons guilt in this case?

22 (No response.)

23 THE COURT: Do we have it?

24 THE CLERK: Give me a couple of minutes.

25 THE COURT: Who is Juror Number 1. Tell me, what is

1 your marital status, how long you've been married, how many
2 kids, their ages, and what your spouse does.

3 JUROR 1: I've been married 30 plus years, I forgot
4 the number. I have one daughter, she's grown. My wife is a
5 real estate broker.

6 THE COURT: The neighborhood you live in
7 Bensonhurst, Iron Wood.

8 JUROR 1: The North Shore of Long Island, Nassau
9 County.

10 THE COURT: Are you employed, what do you do?

11 JUROR 1: I am a New York City elementary school
12 principal.

13 THE COURT: What is your educational background?

14 JUROR 1: I have a masters plus additional work.

15 THE COURT: What is the Masters in?

16 JUROR 1: Administration and supervision.

17 THE COURT: Have you ever served on a jury before?

18 JUROR 1: Never.

19 THE COURT: Have you ever served on a grand jury?

20 JUROR 1: Never.

21 THE COURT: Have you ever been the victim of a
22 crime?

23 JUROR 1: No.

24 THE COURT: Have you ever been a complainant, a
25 defendant or witness in a case?

1 JUROR 1: No, I have not.

2 THE COURT: Do you believe that there is such a
3 thing as organized crime, the Mafia or La Costa Nostra?

4 JUROR 1: I believe that in this country there are
5 some people who organize themselves to commit crimes. It
6 depends what you define as organized crime.

7 THE COURT: Based upon this belief, could you be
8 fair and impartial in a situation such as this?

9 JUROR 1: Absolutely. It depends on the evidence.

10 THE COURT: Okay. Let me ask the same questions of
11 Number 2. Are you married?

12 JUROR 2: Yes, I am married. I am married for three
13 years.

14 THE COURT: Three years?

15 JUROR 2: Yes.

16 THE COURT: You're a rookie, huh?

17 JUROR 2: Yes. I have a son who is 16 months. I
18 live in Brooklyn, east Flatbush.

19 THE COURT: What does your husband do?

20 JUROR 2: He is a construction worker,
21 self-employed. I have -- I work at the Metropolitan Opera
22 House.

23 THE COURT: You work at the opera house?

24 JUROR 2: Yes.

25 THE COURT: You sing?

1 JUROR 2: No. I am a switchboard operator.

2 THE COURT: What is your educational background?

3 JUROR 2: Some college.

4 THE COURT: Your husband's?

5 JUROR 2: He was born in another country but he did
6 take college where he was.

7 THE COURT: Have you ever served on a jury before?

8 JUROR 2: No, I haven't.

9 THE COURT: Do you believe that there are such
10 organizations called Mafia, La Costa Nostra?

11 JUROR 2: I heard of it but I, too, would say, you
12 know, anyone can get together and start a group.

13 THE COURT: Could you put whatever preconceived
14 notion that you have aside and just judge a person based upon
15 the evidence, testimony and the exhibits?

16 JUROR 2: I believe that I definitely can, Your
17 Honor.

18 THE COURT: Okay. Anything about this case that you
19 are aware of that would make it difficult for you to sit in
20 judgment in this matter?

21 JUROR 2: No.

22 THE COURT: Complete. Let me ask Number 3, are you
23 married?

24 JUROR 3: I am married 21 years, widowed 22, and I
25 have a son and daughter.

1 THE COURT: You were married 21 but you are widowed
2 22?

3 JUROR 3: That was how long I was married before my
4 husband passed.

5 THE COURT: You are widowed for 21 years?

6 JUROR 3: I was married for 21 years. My husband
7 passed. I have a son and daughter from that marriage. I have
8 been a widow now for 22 years.

9 THE COURT: Okay. What did your husband do before
10 he passed?

11 JUROR 3: I think he was United Parcel Service.

12 THE COURT: What do the kids do?

13 JUROR 3: My son works for transit, he's a minister.
14 My daughter is presently trying to get employment.

15 THE COURT: I didn't hear that?

16 JUROR 3: My daughter is trying now to get employed
17 as a caregiver.

18 THE COURT: What is your educational background?

19 JUROR 3: High school and business school.

20 THE COURT: Have you ever sat on a jury before?

21 JUROR 3: Yes.

22 THE COURT: Was it federal or state?

23 JUROR 3: I think it was state. The Court in Queens
24 on --

25 THE COURT: It is probably state. Was it criminal

1 or civil?

2 JUROR 3: Civil.

3 THE COURT: How long ago was that?

4 JUROR 3: I think it was 2000.

5 THE COURT: So it was about five years ago?

6 JUROR 3: Yes.

7 THE COURT: Have you ever sat on a Grand Jury?

8 JUROR 3: No.

9 THE COURT: Have you ever been involved in a
10 criminal case as a defendant, witness, or any other?

11 JUROR 3: No.

12 THE COURT: Any reason why you could not sit in this
13 case and be fair and impartial and follow the court's
14 instruction as to the law?

15 JUROR 3: There is no reason.

16 THE COURT: I can't hear you.

17 JUROR 3: No reason.

18 THE COURT: You speak up. I forget names. I am all
19 right.

20 Number 4, you married?

21 JUROR 4: Divorced.

22 THE COURT: What did the ex-husband do?

23 JUROR 4: Didn't work hard; I've been thinking that.
24 First was an accountant, the second a mechanic.

25 THE COURT: A what?

1 JUROR 4: A mechanic.

2 THE COURT: What neighborhood do you live in?

3 JUROR 4: Nassau County.

4 THE COURT: Okay. What do you do for a living?

5 JUROR 4: I am retired teacher.

6 THE COURT: Do you have children?

7 JUROR 4: A son, 20.

8 THE COURT: What does he do?

9 JUROR 4: He is in college.

10 THE COURT: God bless him. What does he major in?

11 JUROR 4: Communication.

12 THE COURT: The computers?

13 JUROR 4: I think he would like to have a job in any
14 capacity with the Mets.

15 THE COURT: With the Mets?

16 JUROR 4: Yes.

17 THE COURT: With the Mets?

18 JUROR 4: Yes.

19 THE COURT: I don't know nobody there so I can't
20 help you.

21 What is your Educational background?

22 JUROR 4: A bachelor, masters, beyond that, as well.

23 THE COURT: What school?

24 JUROR 4: St. John's, Queens College, and Nassau
25 Community, as well as Queens College.

1 THE COURT: Have you ever served on a jury before?

2 JUROR 4: Yes.

3 THE COURT: State or federal?

4 JUROR 4: State.

5 THE COURT: How long ago was that?

6 JUROR 4: Four years.

7 THE COURT: Four years?

8 JUROR 4: Yes.

9 THE COURT: Was it criminal or civil?

10 JUROR 4: Civil.

11 THE COURT: Did it come to a resolution?

12 JUROR 4: Yes.

13 THE COURT: Have you ever been on a Grand Jury?

14 JUROR 4: No.

15 THE COURT: You ever been involved in a criminal
16 case as a defendant, complainant or witness?

17 JUROR 4: No.

18 THE COURT: Is there any reason why you could not
19 listen to the evidence?

20 JUROR 4: I would like to take that back.

21 THE COURT: What part?

22 JUROR 4: The prior question. Just recently I was
23 complainant, I guess you would term it, mischief making on the
24 part of some kids.

25 THE COURT: You complained to the police?

1 JUROR 4: I did.

2 THE COURT: Did they resolve it for you?

3 JUROR 4: They did.

4 THE COURT: How long ago was that?

5 JUROR 4: Last June.

6 THE COURT: Any reason why you couldn't listen to
7 the evidence, follow the Court's instruction as to the law and
8 render a fair and impartial verdict?

9 JUROR 4: No.

10 THE COURT: Can you be fair and impartial if you are
11 chosen?

12 JUROR 4: Yes.

13 THE COURT: Next in the --

14 JUROR 3: 3 again. I am presently employed.

15 THE COURT: Where do you work?

16 JUROR 4: United States Postal Service.

17 THE COURT: The Post Office, Number 3?

18 JUROR 3: Yes.

19 THE COURT: Next. Number 5, who is that Number 5?

20 JUROR 5: Yes.

21 THE COURT: Where do you live?

22 JUROR 5: Williamsburg.

23 THE COURT: What do you do?

24 JUROR 5: I am a home attendant.

25 THE COURT: Are you married?

1 JUROR 5: Divorced.

2 THE COURT: What did your husband do?

3 JUROR 5: He is not there. He is not here now.

4 THE COURT: What did he do?

5 JUROR 5: He was working in factory.

6 THE COURT: How much education have you had?

7 JUROR 5: Excuse me?

8 THE COURT: How much education have you had,
9 schooling?

10 JUROR 5: Junior high school.

11 THE COURT: Where?

12 JUROR 5: In Brooklyn. Here.

13 THE COURT: Have you ever served on a jury before?

14 JUROR 5: Yes.

15 THE COURT: Where?

16 JUROR 5: What?

17 THE COURT: Did you served on a jury before?

18 JUROR 5: Yes.

19 THE COURT: Where?

20 JUROR 5: Yes, in the supreme.

21 THE COURT: In the state court?

22 JUROR 5: Yes.

23 THE COURT: How long ago was that?

24 JUROR 5: Four years.

25 THE COURT: Four years?

1 JUROR 5: Yes.

2 THE COURT: Was it a civil case or a criminal case?

3 JUROR 5: Civil.

4 THE COURT: Was it for a crime or someone seeking
5 money?

6 JUROR 5: It was lot of cases.

7 THE COURT: Okay. How long did you serve?

8 JUROR 5: Two weeks.

9 THE COURT: Did the case come to a resolution?

10 JUROR 5: No.

11 THE COURT: Did they settle out of court or what?

12 JUROR 5: Yes, they did.

13 THE COURT: Have you ever been on a Grand Jury?

14 JUROR 5: No.

15 THE COURT: You ever been involved in a criminal
16 case as a complainant, defendant or witness?

17 JUROR 5: No.

18 THE COURT: Any reason why you feel you could not
19 listen to the evidence, follow the Court's instructions as to
20 the law and render a fair and impartial verdict? Can you be
21 fair and impartial?

22 JUROR 5: I don't understand that word.

23 THE COURT: I can't hear you.

24 JUROR 5: I don't understand.

25 THE COURT: Can you be fair and impartial if you

1 were chosen?

2 JUROR 5: I don't understand too much, some words I
3 don't understand.

4 THE COURT: Mr. Ashley?

5 MR. ASHLEY: I have no objection.

6 MR. SEIGEL: I have no objection.

7 THE COURT: We would send you to another jury.

8 THE WITNESS: All right.

9 THE CLERK: You can go back downstairs, Number 5.
10 Juror Number 31. Juror 31, have you heard my
11 questions?

12 JUROR 31: Yes.

13 THE COURT: Any responses to any of those questions?

14 JUROR 31: It is okay. It is fair for me.

15 THE COURT: I'm sorry?

16 JUROR 31: It is fair to me.

17 THE COURT: Do you have any responses to the
18 questions that I asked?

19 JUROR 31: Can you repeat the last one. I have been
20 listening, it is hard to hear.

21 THE COURT: I am going to ask you some specific
22 questions.

23 JUROR 31: All right.

24 THE COURT: Let me ask you, where do you live?

25 JUROR 31: In Brooklyn.

1 THE COURT: How long have you lived there?

2 JUROR 31: 30 years.

3 THE COURT: What is your occupation, what do you do
4 for a living?

5 JUROR 31: Home health aide.

6 THE COURT: Are you married?

7 JUROR 31: No.

8 THE COURT: Any children?

9 JUROR 31: Yes, I have two sons.

10 THE COURT: How old are they?

11 JUROR 31: One is 26 and one is 13.

12 THE COURT: What does the 26 year old do?

13 JUROR 31: He is security in Manhattan.

14 THE COURT: Have you ever sat on a jury before?

15 JUROR 31: No, sir.

16 THE COURT: You ever been on a Grand Jury before?

17 JUROR 31: No.

18 THE COURT: Any reason why you could not listen to
19 the evidence, follow my instructions as to the law and render
20 a fair and impartial verdict if you were chosen? Can you be
21 fair and impartial if you are chosen?

22 JUROR 31: Yes, sir, I can.

23 THE COURT: Number 6.

24 JUROR 6: Yes.

25 THE COURT: Where do you live?

1 JUROR 6: In Suffolk County.

2 THE COURT: You are presently head of security?

3 JUROR 6: Yes.

4 THE COURT: How long you been doing that?

5 JUROR 6: Five years. I am going into my sixth
6 year.

7 THE COURT: Are you married?

8 JUROR 6: I have a domestic partner.

9 THE COURT: What does the partner do for a living?

10 JUROR 6: Chiropractor.

11 THE COURT: Chiropractor?

12 JUROR 6: Yes.

13 THE COURT: Any children?

14 JUROR 6: I have two children in elementary school.

15 THE COURT: Have you ever sat on a jury before?

16 JUROR 6: No, sir.

17 THE COURT: You ever been a grand juror?

18 JUROR 6: No.

19 THE COURT: I assume, or I shouldn't assume
20 anything, I should ask you if you've ever been involved in a
21 criminal case as complainant, defendant or witness?

22 JUROR 6: Yes.

23 THE COURT: That is in connection with your job as a
24 police officer?

25 JUROR 6: Yes.

1 THE COURT: You know how many times?

2 JUROR 6: A lot.

3 THE COURT: A lot?

4 JUROR 6: Yes.

5 THE COURT: Any reason why you can not listen to the
6 evidence, follow the Court's instructions, and render a fair
7 and impartial verdict?

8 JUROR 6: Yes, I can do that.

9 THE COURT: Next I will ask you the same thing,
10 where do you live?

11 JUROR 7: I live in Staten Island.

12 THE COURT: Staten Island?

13 JUROR 7: Yes.

14 THE COURT: How long have you lived there?

15 JUROR 7: About ten years.

16 THE COURT: What is your occupation?

17 JUROR 7: I work at a factory and I work as a
18 computer sciences.

19 THE COURT: A computer scientist. How much
20 education have you had?

21 JUROR 7: I have a Master's Degree.

22 THE COURT: In computer science?

23 JUROR 7: Yes.

24 THE COURT: Did I ask you if you were married?

25 JUROR 7: I am divorced.

1 THE COURT: What did your ex-husband do?

2 JUROR 7: He is a computer engineer.

3 THE COURT: Any children?

4 JUROR 7: I have one son.

5 THE COURT: How old?

6 JUROR 7: 31. He is a teacher.

7 THE COURT: He is a school teacher?

8 JUROR 7: Yes.

9 THE COURT: Have you ever sat on a jury before?

10 JUROR 7: No.

11 THE COURT: You ever been on a Grand Jury before?

12 JUROR 7: No.

13 THE COURT: Have you ever been involved in a
14 criminal case as a complainant, a defendant or a witness?

15 JUROR 7: No.

16 THE COURT: Could you follow the Court's
17 instructions as to the law, listen to the evidence, as I said
18 what evidence is, and be fair and impartial?

19 JUROR 7: Yes.

20 THE COURT: Thank you. Number 8?

21 JUROR 8: I live in Suffolk County.

22 THE COURT: You married?

23 JUROR 8: I am married for 14 years.

24 THE COURT: What does your wife do?

25 JUROR 8: She is a bus driver.

1 THE COURT: A bus driver?

2 JUROR 8: Yes.

3 THE COURT: Any children?

4 JUROR 8: Yes, we have three children.

5 THE COURT: How old?

6 JUROR 8: Oldest daughter is 23 and 17-year old.

7 THE COURT: What does the 23 year old do for a
8 living?

9 JUROR 8: She is going to college.

10 THE COURT: She starting college?

11 JUROR 8: No, she is in the second year.

12 THE COURT: What is she majoring in?

13 JUROR 8: Psychology or something.

14 THE COURT: How much schooling have you had?

15 JUROR 8: I have two years of college.

16 THE COURT: What college?

17 JUROR 8: Nassau Community.

18 THE COURT: Nassau Community?

19 JUROR 8: Yes.

20 THE COURT: What did you major in?

21 JUROR 8: Economics.

22 THE COURT: Everybody speak up so the Court Reporter
23 can take everything down.

24 Have you ever sat on a jury before?

25 JUROR 8: No, I haven't.

1 THE COURT: You ever been a grand juror?

2 JUROR 8: No.

3 THE COURT: You ever been involved in a criminal
4 case as complainant, defendant or witness?

5 JUROR 8: No.

6 THE COURT: Can you listen to the evidence, follow
7 the Court's instructions and be fair and impartial if you are
8 chosen?

9 JUROR 8: I think I could, yes.

10 MR. SEIGEL: Your Honor, can we get the occupation.

11 THE COURT: What is your occupation?

12 JUROR 8: Truck driver.

13 THE COURT: I guess I didn't ask you that.

14 JUROR 8: No, you didn't.

15 THE COURT: I apologize. You are Juror 8.
16 Who is 9?

17 JUROR 9: I am Juror 9.

18 THE COURT: Where do you live?

19 JUROR 9: Suffolk County.

20 THE COURT: How long have you lived there?

21 JUROR 9: All my life, 40.

22 THE COURT: I was getting ready to say 21 years.

23 JUROR 9: Thank you.

24 THE COURT: What is your occupation?

25 JUROR 9: I am a special education teacher.

1 THE COURT: You teach in the city or out there?

2 JUROR 9: Suffolk County.

3 THE COURT: Are you married?

4 JUROR 9: Married, three boys.

5 THE COURT: What does your husband do?

6 JUROR 9: Manufacturing.

7 THE COURT: Manufacturer?

8 JUROR: Wire and cable.

9 THE COURT: The three boys?

10 JUROR 9: 17, 14 and 10.

11 THE COURT: What do they do, beside give you gray
12 hairs?

13 JUROR 9: That is it, all of the time.

14 THE COURT: What kind of education?

15 JUROR 9: Masters, plus.

16 THE COURT: What school?

17 JUROR 9: Stony Brook and St. Joseph's College.

18 THE COURT: You ever sat on a jury before?

19 JUROR 9: No.

20 THE COURT: You ever been a grand juror?

21 JUROR 9: No.

22 THE COURT: You ever been involved in a criminal
23 case as a complainant, defendant or a witness?

24 JUROR 9: No.

25 THE COURT: Can you listen to the evidence in this

1 case, follow my instructions as to the law and render a fair
2 and impartial verdict if you were chosen?

3 JUROR 9: Yes, I can.

4 THE COURT: Sir, where do you live, you are number?

5 JUROR 10: Ten. South Shore, Nassau County. I'm
6 married. My wife is a librarian. I am a supervisor for
7 independent power producers. We make electricity and Con
8 Edison buys it.

9 THE COURT: Okay. What is your education?

10 JUROR 10: High school. One semester of college.

11 THE COURT: Do you have any kids?

12 JUROR 10: Two daughters.

13 THE COURT: What do they do?

14 JUROR 10: 18 and 14.

15 THE COURT: What does the 18 year old do?

16 JUROR 10: She is a senior in high school. Going to
17 Hofstra next year.

18 THE COURT: It is a good school.

19 Have you ever sat on a jury before?

20 JUROR 10: Two.

21 THE COURT: State or federal?

22 JUROR 10: State. Civil.

23 THE COURT: Civil case?

24 JUROR 10: One reached a verdict. I was called at
25 home and told not to report. The second trial we heard

1 opening arguments and it reached a settlement.

2 THE COURT: Okay. How long ago has that been?

3 JUROR 10: The first one was about 20 years ago.

4 The second one was seven or eight years, or so.

5 THE COURT: You ever been a grand juror?

6 JUROR 10: No.

7 THE COURT: You ever been involved in a criminal
8 case as a defendant, complainant or witness?

9 JUROR 10: No.

10 THE COURT: Any reason why you can't listen to the
11 evidence, follow the Court's instructions and rendered a fair
12 and impartial verdict?

13 JUROR 10: I can be fair and impartial, yes.

14 THE COURT: Number?

15 JUROR 11: 11.

16 THE COURT: Number 11, where do you live?

17 JUROR 11: I live in Queens. I am married.

18 THE COURT: What about your husband?

19 JUROR 11: My husband does shipping. He works -- we
20 live -- at shipping in New Jersey.

21 THE COURT: Shipping in New Jersey.

22 JUROR 11: Yes.

23 THE COURT: Any children?

24 JUROR 11: I've got five children.

25 THE COURT: Five step children?

1 JUROR 11: My child. They are all born in my
2 country.

3 THE COURT: Where is that?

4 JUROR 11: Haiti.

5 THE COURT: How old are the children?

6 JUROR 11: The oldest one is 35.

7 THE COURT: What does he do?

8 JUROR 11: He do the school at my country. But when
9 she came here and went to school and start college and now she
10 is a nurse. She is still going to school. She is working as
11 a CNA now.

12 THE COURT: What does the next one do?

13 JUROR 11: The next one is not here. She is
14 working. She doesn't want to. She has children. All were
15 born in my country.

16 THE COURT: Where do they live?

17 JUROR 11: One lives in Queens. One lives in the
18 Philadelphia. I got one living with me. He went to school.
19 He was one of those or something like that.

20 THE COURT: Have you ever sat on a jury before?

21 JUROR 11: Yes. I served only one day in Sussex.

22 THE COURT: Sussex Boulevard?

23 JUROR 11: Yes.

24 THE COURT: That was a state court. Was it a
25 criminal case or civil case?

1 JUROR 11: I think it was civil.

2 THE COURT: Civil. How long ago was that?

3 JUROR 11: One day.

4 THE COURT: No. I understand that it was one day.

5 How long ago was that? When did you serve on the jury?

6 JUROR 11: Oh, '01.

7 THE COURT: So that is five years, 2001?

8 JUROR 11: 2001.

9 THE COURT: You ever been a grand juror?

10 JUROR 11: No.

11 THE COURT: You ever been involved in a criminal
12 case as complainant, defendant or a witness?

13 JUROR 11: I have to say yes because my husband get
14 him victimized. He is away from home someone beat him up at
15 his job. The police brought him -- they brought him to
16 Brooklyn. They got the gentleman.

17 THE COURT: They caught him?

18 JUROR 11: They caught him. When we were told and
19 we thought what we have to do because he has five days I
20 think. He got -- he still is suffering from that, with his
21 face and all that. We don't know.

22 THE COURT: How long ago was that?

23 JUROR 11: That was in 1999.

24 THE COURT: The fact that this happened, would you
25 be fair and impartial in this case if you were chosen?

1 JUROR 11: I can say because I don't know if I can.
2 I will see.

3 THE COURT: Can you be fair and impartial? Do you
4 understand what I am saying?

5 JUROR 11: Some things I don't understand. Too many
6 words but I didn't understand.

7 MR. ROSEN: No objection.

8 MR. ASHLEY: No objection.

9 MR. SEIGEL: No objection.

10 THE COURT: We will get you another jury.

11 THE CLERK: You can go back downstairs.

12 Juror Number 32?

13 THE COURT: Ladies and gentlemen, I will let you
14 take a nature break. Take five minutes.

15 (Recess taken at 12:55 p.m.)

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1 (Time noted: 1:05 p.m. after recess.)

2 THE COURT: Number 11, have you heard the questions
3 that I have been asking.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Any response to any of them?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Where do you live?

8 PROSPECTIVE JUROR: In Brooklyn.

9 THE COURT: How long have you lived there?

10 PROSPECTIVE JUROR: 30 plus.

11 THE COURT: What is your occupation?

12 PROSPECTIVE JUROR: Retired nurse, registered nurse.

13 THE COURT: Were you in private practice or you
14 worked for --

15 PROSPECTIVE JUROR: No, I worked for a hospital.

16 THE COURT: How much education have you had?

17 PROSPECTIVE JUROR: Up to BS.

18 THE COURT: Where did you get your degree?

19 PROSPECTIVE JUROR: At St. Joseph's College.

20 THE COURT: That is St. Joseph's down here?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Are you married?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: He is retired?

25 PROSPECTIVE JUROR: He is a retired U.N. Security

1 Officer.

2 THE COURT: When you say U.S. Security --

3 PROSPECTIVE JUROR: U.N. Security Officer. United
4 Nations.

5 THE COURT: Oh, U.N.. Okay.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Do you have children?

8 PROSPECTIVE JUROR: Yes, two sons.

9 THE COURT: What do they do?

10 PROSPECTIVE JUROR: One works for UPS. One works
11 for Verizon.

12 THE COURT: You have a Bachelor's Degree?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Have you ever sat on a jury before?

15 PROSPECTIVE JUROR: I was chosen as an alternate for
16 one.

17 THE COURT: Federal or state?

18 PROSPECTIVE JUROR: State. I am sorry. Yes, it was
19 state.

20 THE COURT: Was it civil or criminal?

21 PROSPECTIVE JUROR: Civil.

22 THE COURT: How long ago was that?

23 PROSPECTIVE JUROR: '90-something -- '96 or
24 something like that.

25 THE COURT: Do you know if the case ever came to a

1 resolution?

2 PROSPECTIVE JUROR: It was settled.

3 THE COURT: Have you ever been involved in a
4 criminal case as a complainant, defendant or witness?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Could you listen to the evidence in this
7 case, follow my instructions as to the law and render a fair
8 and impartial verdict if you were chosen?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: I ask you the same thing, Number 12.
11 Where do you live?

12 PROSPECTIVE JUROR: North Shore of Long Island.

13 THE COURT: How long have you lived there?

14 PROSPECTIVE JUROR: 32 years.

15 THE COURT: What is your occupation?

16 PROSPECTIVE JUROR: I am a benefits administrator
17 for a school system.

18 THE COURT: Are you married?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: What does your husband do?

21 PROSPECTIVE JUROR: He is a commercial real estate
22 broker on Long Island.

23 THE COURT: What is your education, how much
24 education have you had?

25 PROSPECTIVE JUROR: I have two years of college.

1 THE COURT: What school?

2 PROSPECTIVE JUROR: I was a junior in college up in
3 Boston.

4 THE COURT: How many children do you have?

5 PROSPECTIVE JUROR: I have three children.

6 THE COURT: What do they do?

7 PROSPECTIVE JUROR: One is a CPA. The other one is
8 in the hotel business. And my third one is a student at
9 Hofstra.

10 THE COURT: Have you ever sat on a jury before?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Have you ever been a Grand Juror?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Have you ever been involved in a
15 criminal case as complainant, defendant or a witness?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Could you listen to the evidence and
18 follow my instructions and be fair and impartial if you were
19 chosen?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: You're Number 13?

22 PROSPECTIVE JUROR: Yes. I live in Queens. I am
23 married.

24 THE COURT: How long have you lived in Queens?

25 PROSPECTIVE JUROR: Five years.

1 THE COURT: Where did you live before?

2 PROSPECTIVE JUROR: I lived in the Bronx on the
3 Concourse.

4 THE COURT: You're married. What does your husband
5 do?

6 PROSPECTIVE JUROR: He is a security guard at JFK.

7 THE COURT: Any children?

8 PROSPECTIVE JUROR: I have three children. One is
9 self-employed. He runs an ambulance service.

10 THE COURT: A what?

11 PROSPECTIVE JUROR: Ambulance. Ambulance.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: And the second girl, she works
14 in a hospital. She is the office administrator. And the
15 third, she is not working, she is married.

16 THE COURT: How much education have you had?

17 PROSPECTIVE JUROR: I have a High School diploma in
18 my country.

19 THE COURT: Where is that?

20 PROSPECTIVE JUROR: In the Caribbean.

21 THE COURT: Have you ever sat on a jury before?

22 PROSPECTIVE JUROR: Yes, just for two days.

23 THE COURT: Was it a civil case?

24 PROSPECTIVE JUROR: A civil case.

25 THE COURT: State or federal?

1 PROSPECTIVE JUROR: State.

2 THE COURT: How long ago?

3 PROSPECTIVE JUROR: Two or three.

4 THE COURT: Two or three years ago?

5 PROSPECTIVE JUROR: Yes, almost four years ago.

6 THE COURT: Have you ever been involved in a
7 criminal case as a complainant, plaintiff or witness?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Is there any reason you couldn't listen
10 to the evidence and follow my instructions and be fair and
11 impartial?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: You can be fair and impartial?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Next.

16 PROSPECTIVE JUROR: I live in Queens for six years.
17 I was married and I am divorced.

18 THE COURT: What did your ex-husband do?

19 PROSPECTIVE JUROR: A mechanic. And I have two
20 children.

21 THE COURT: What do they do?

22 PROSPECTIVE JUROR: One is 20 years and one is 9.

23 THE COURT: What does the 20-year-old do?

24 PROSPECTIVE JUROR: 20 years, he is like motel
25 security.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: The other one, she is at school.

3 THE COURT: How much education have you had?

4 PROSPECTIVE JUROR: In my country?

5 THE COURT: Where was your country?

6 PROSPECTIVE JUROR: Haiti.

7 THE COURT: How far in school did you go in Haiti?

8 PROSPECTIVE JUROR: I go to eighth grade.

9 THE COURT: Eighth grade?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Have you ever sat on a jury before?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Where?

14 PROSPECTIVE JUROR: Queens Boulevard.

15 THE COURT: How long ago has that been?

16 PROSPECTIVE JUROR: About five years.

17 THE COURT: That was a civil case?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Did it come to a resolution?

20 PROSPECTIVE JUROR: I was just there for three days.

21 THE COURT: Have you ever been involved in a
22 criminal case as a complainant, defendant or witness?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You have?

25 PROSPECTIVE JUROR: Yes. I got -- my country

1 people, I give a place to sleep, you know. And the landlord
2 came to my house and then they call the cops. And the cop
3 gives me a summons, and I go to the court, and the Judge
4 dismiss the case.

5 THE COURT: Okay. Now, there was a complaint
6 against you?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: They dismissed the case?

9 PROSPECTIVE JUROR: Um-hum.

10 THE COURT: How long ago has that been?

11 PROSPECTIVE JUROR: That's two years.

12 THE COURT: Now, is there any reason why you could
13 not listen to the evidence, follow the Court's instructions
14 and render a fair and impartial verdict?

15 PROSPECTIVE JUROR: No.

16 THE COURT: You can be fair and impartial if you are
17 chosen?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Next.

20 PROSPECTIVE JUROR: I am 15.

21 THE COURT: Where do you live?

22 PROSPECTIVE JUROR: Brooklyn.

23 THE COURT: How long have you lived there?

24 PROSPECTIVE JUROR: All my life.

25 THE COURT: 21 years.

1 PROSPECTIVE JUROR: Yes. Plus. A lot of plus.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: What does your husband do?

5 PROSPECTIVE JUROR: He is retired.

6 THE COURT: Do you have children?

7 PROSPECTIVE JUROR: No.

8 THE COURT: How much education have you had?

9 PROSPECTIVE JUROR: High School.

10 THE COURT: What High School?

11 PROSPECTIVE JUROR: Midwood.

12 THE COURT: I know where it is. Right across the
13 street from Brooklyn College.

14 PROSPECTIVE JUROR: Correct.

15 THE COURT: Have you ever sat on a jury before?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Federal or state?

18 PROSPECTIVE JUROR: Federal.

19 THE COURT: Federal?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: In this building?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: How long ago was that?

24 PROSPECTIVE JUROR: About fifteen years.

25 THE COURT: Was it a civil or criminal case?

1 PROSPECTIVE JUROR: Civil.

2 THE COURT: Have you ever been a Grand Juror?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Have you ever been involved in a
5 criminal case as a complainant, a defendant or a witness?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Is there any reason why you can't listen
8 to the evidence and follow my instructions as to the law and
9 render a fair and impartial verdict?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Next.

12 Where do you live?

13 PROSPECTIVE JUROR: 16. I live in East Flatbush.

14 THE COURT: How long have you lived there?

15 PROSPECTIVE JUROR: 57 years.

16 THE COURT: Are you married?

17 PROSPECTIVE JUROR: No. No.

18 THE COURT: Do you have any children?

19 PROSPECTIVE JUROR: Two children.

20 THE COURT: How old are they?

21 PROSPECTIVE JUROR: 35 and 40.

22 THE COURT: What do they do?

23 PROSPECTIVE JUROR: One graduated from Howard
24 University magna cum laude. And the other one is studying to
25 be a veterinarian.

1 THE COURT: Studying to be what?

2 PROSPECTIVE JUROR: A veterinarian.

3 THE COURT: Okay. That is what my granddaughter
4 wants to do, she wants to be a veterinarian.

5 What kind of schooling do you have?

6 PROSPECTIVE JUROR: High School and some college.

7 THE COURT: What High School and college?

8 PROSPECTIVE JUROR: I graduated from Lawrence High
9 School in Brooklyn in the 60's. Then I attended Kingsborough
10 College.

11 THE COURT: Have you ever been a Grand Juror?

12 PROSPECTIVE JUROR: Oh, yes. Four of them.

13 THE COURT: Four?

14 PROSPECTIVE JUROR: Yes. Well, like Grand Juries,
15 civil, criminal. I have been on all of them.

16 THE COURT: When was the last time?

17 PROSPECTIVE JUROR: About four years ago. It was a
18 Grand Jury.

19 THE COURT: Did you ever serve state or federal?

20 PROSPECTIVE JUROR: Both.

21 THE COURT: If you had to guess, how many times have
22 you served?

23 PROSPECTIVE JUROR: You mean state or the jury
24 system as a whole?

25 THE COURT: The jury system as a whole.

1 PROSPECTIVE JUROR: Maybe eight times, twelve times.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: That is in different years.

4 THE COURT: I understand.

5 Have you ever been involved a criminal case as a
6 complainant, defendant or witness?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Could you listen to the evidence, follow
9 my instructions and render a fair and impartial verdict if you
10 were chosen?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Next.

13 PROSPECTIVE JUROR: And one question you didn't ask
14 me, where I work.

15 THE COURT: Oh.

16 PROSPECTIVE JUROR: I work for The Department of
17 Veterans Affairs in Brooklyn.

18 THE COURT: Okay. I stand corrected.

19 Next.

20 PROSPECTIVE JUROR: I am 17. I live in Nassau
21 County. I am a teacher.

22 THE COURT: What do you teach?

23 PROSPECTIVE JUROR: Physical Education.

24 THE COURT: Okay. Are you married?

25 PROSPECTIVE JUROR: Single.

1 THE COURT: Any children?

2 PROSPECTIVE JUROR: One daughter.

3 THE COURT: How old is she?

4 PROSPECTIVE JUROR: 14.

5 THE COURT: She is in school, I guess.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What schooling have you had?

8 PROSPECTIVE JUROR: Bachelor's was at Salem State
9 University and Master's at Delphi University.

10 THE COURT: Have you ever sat on a jury before?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Have you ever been a Grand Juror?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Have you ever been involved a criminal
15 case as a complainant, defendant or witness?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Could you listen to the evidence, follow
18 my instructions as to the law and render a fair and impartial
19 verdict?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thanks.

22 Next.

23 PROSPECTIVE JUROR: I am number 18.

24 THE COURT: Where do you live?

25 PROSPECTIVE JUROR: I live in Suffolk County.

1 THE COURT: How long have you lived there?

2 PROSPECTIVE JUROR: 26 years.

3 THE COURT: Are you married?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What does your husband do?

6 PROSPECTIVE JUROR: He works for the Post Office.

7 He is a clerk.

8 THE COURT: What do you do for a living?

9 PROSPECTIVE JUROR: I am a special education
10 teacher.

11 THE COURT: Do you have any special education?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Any children?

14 PROSPECTIVE JUROR: No.

15 THE COURT: And your education?

16 PROSPECTIVE JUROR: I received my Master's at LIU
17 Stony Brook.

18 THE COURT: Have you ever sat on a jury before?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Grand Jury?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Have you ever been involved in any
23 criminal cases as a complainant, defendant or witness?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Could you listen to the evidence, follow

1 the Court's instruction and render a fair and impartial
2 verdict?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Next.

5 PROSPECTIVE JUROR: Number 19. I am married. Three
6 daughters.

7 THE COURT: Where do you live?

8 PROSPECTIVE JUROR: Suffolk County.

9 THE COURT: How long?

10 PROSPECTIVE JUROR: Twenty years.

11 THE COURT: And you are married with three
12 daughters?

13 PROSPECTIVE JUROR: Three daughters.

14 THE COURT: What does your wife do for a living?

15 PROSPECTIVE JUROR: She's a housewife.

16 THE COURT: A tough job.

17 PROSPECTIVE JUROR: Very tough.

18 THE COURT: What do your daughters do?

19 PROSPECTIVE JUROR: One works in the Bank of New
20 York. One works down on Wall Street. One works at the golf
21 course in the club. They have the restaurant there. They
22 have plenty of people working there.

23 THE COURT: Okay. What schooling have you had?

24 PROSPECTIVE JUROR: High School.

25 THE COURT: Where?

1 PROSPECTIVE JUROR: In Brooklyn.

2 THE COURT: What school?

3 PROSPECTIVE JUROR: I had -- I was 30 years old when
4 I finished High School.

5 THE COURT: Okay. Have you ever sat on a jury
6 before?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Have you ever been a Grand Juror?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Have you ever been involved in a
11 criminal case as a complainant, defendant or witness?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Can you listen to the evidence, follow
14 my instructions and render a fair and impartial verdict if you
15 are chosen?

16 PROSPECTIVE JUROR: I could, but I don't like this.

17 THE COURT: As I said before, there are many things
18 that I don't like. It is very difficult. But if you were
19 chosen, could you be fair and impartial?

20 PROSPECTIVE JUROR: I hope, possibly.

21 THE COURT: You are old-fashioned?

22 PROSPECTIVE JUROR: Very old-fashioned.

23 THE COURT: I am old-fashioned, too. But under our
24 system of law -- our system of law is what makes our country
25 so great that you are presumed to be innocent. If the

1 government wants to convict you of a crime, they have to prove
2 that beyond a reasonable doubt. They want people like you,
3 old-fashioned and new-fashioned, to be fair and reasonable,
4 with an open mind. That is all they are asking, is to listen
5 to the evidence and be fair and reasonable.

6 PROSPECTIVE JUROR: I would like to be reasonable.
7 I would rather shoot first and ask questions later.

8 MR. ASHLEY: I will move that he be excused, Your
9 Honor.

10 MR. ROSEN: No objection.

11 MR. SEIGEL: We agree, Judge.

12 THE COURT: You can leave.

13 (Prospective Juror Number 19 is excused.)

14 THE COURT: Juror Number 33.

15 THE CLERK: May I have your card?

16 THE COURT: Have you heard my questions, Number 33?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Any responses to any of those questions?

19 PROSPECTIVE JUROR: I am a community officer for 175
20 officers.

21 THE COURT: You are a community officer?

22 PROSPECTIVE JUROR: Yes, bridge and tunnel officer.

23 I have 175 law enforcement officers under my command.

24 THE COURT: The fact that you have this law
25 enforcement background, can you be fair and impartial?

1 PROSPECTIVE JUROR: Your Honor, I have been in law
2 enforcement for 21 years. I have seen it all. I don't think
3 so.

4 MR. ROSEN: No objection.

5 THE COURT: Okay. We will put you on another jury.
6 (Prospective Juror Number 33 excused.)

7 THE COURT: We will put you on another jury.
8 Number 34.

9 THE CLERK: May I have your card? Thank you.

10 THE COURT: Have you heard my questions?

11 PROSPECTIVE JUROR: Yes, I have.

12 THE COURT: Any responses to any of them?

13 PROSPECTIVE JUROR: My uncle was a cop for New York
14 City.

15 THE COURT: How long ago has that been?

16 PROSPECTIVE JUROR: A long time.

17 THE COURT: An old-timer.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: The fact that he was an officer, would
20 that impair your ability to deliberate fairly and impartially
21 in this case if you were chosen?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Where do you live?

24 PROSPECTIVE JUROR: Queens.

25 THE COURT: How long have you lived there?

1 PROSPECTIVE JUROR: All my life.

2 THE COURT: Same thing, 21 years.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Are you married?

5 PROSPECTIVE JUROR: Single.

6 THE COURT: What is your occupation?

7 PROSPECTIVE JUROR: Auditor.

8 THE COURT: For who?

9 PROSPECTIVE JUROR: The federal government.

10 THE COURT: Any children?

11 PROSPECTIVE JUROR: No.

12 THE COURT: How much schooling have you had?

13 PROSPECTIVE JUROR: Bachelor's in Accounting.

14 THE COURT: A Bachelor's. What school?

15 PROSPECTIVE JUROR: Baruch.

16 THE COURT: Have you ever sat on a jury before?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Have you ever been a Grand Juror?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Have you been involved in a criminal
21 case as a complainant, defendant or witness?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Can you listen to the evidence, follow
24 my instructions and render a fair and impartial verdict if you
25 were chosen?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you very much.

3 Next.

4 PROSPECTIVE JUROR: I am 29. I live in Suffolk
5 County twenty years. Married with three children.

6 THE COURT: How old are the kids?

7 PROSPECTIVE JUROR: 30, 25 and 21.

8 THE COURT: What do they do?

9 PROSPECTIVE JUROR: Two are in real estate, one in
10 rental equipment.

11 THE COURT: What does your wife do?

12 PROSPECTIVE JUROR: She is a retired medical
13 assistant.

14 THE COURT: You gave your occupation?

15 PROSPECTIVE JUROR: I am systems analyst for a bank.

16 THE COURT: What is your education?

17 PROSPECTIVE JUROR: Bachelor's Degree.

18 THE COURT: What school?

19 PROSPECTIVE JUROR: Brooklyn College.

20 THE COURT: Have you ever served on a jury before?

21 PROSPECTIVE JUROR: Yes. Civil. It was settled
22 after about two days.

23 THE COURT: State or federal?

24 PROSPECTIVE JUROR: State.

25 THE COURT: How long ago would that have been?

1 PROSPECTIVE JUROR: About four or five years. I
2 have served on a Grand Jury about twenty years ago.

3 THE COURT: State or federal?

4 PROSPECTIVE JUROR: State.

5 THE COURT: You ever been involved in a criminal
6 case as a complainant, defendant or witness?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Can you listen to the evidence, follow
9 my instructions and render a fair and impartial verdict?

10 PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: Next.

12 PROSPECTIVE JUROR: 21.

13 THE COURT: Where do you live?

14 PROSPECTIVE JUROR: Staten Island.

15 THE COURT: How long have you lived there?

16 PROSPECTIVE JUROR: Three years.

17 THE COURT: Where did you live before there?

18 PROSPECTIVE JUROR: New Jersey.

19 THE COURT: You married?

20 PROSPECTIVE JUROR: Yes, I am.

21 THE COURT: What does your husband do?

22 PROSPECTIVE JUROR: He is a physician.

23 THE COURT: What kind of medicine does he practice?

24 PROSPECTIVE JUROR: He is a pulmonologist and
25 intensivist.

1 THE COURT: Kids?

2 PROSPECTIVE JUROR: I have two boys, 26 and 28.

3 THE COURT: What do they do?

4 PROSPECTIVE JUROR: I have one in medical school and
5 the other is in law school.

6 THE COURT: Is there anybody here who is going to
7 law school? I forgot to ask that question.

8 What law school does your son go to?

9 PROSPECTIVE JUROR: St. John's.

10 THE COURT: How much education have you had?

11 PROSPECTIVE JUROR: I have an Associate's Degree in
12 Science.

13 THE COURT: Have you ever served on a jury before?

14 PROSPECTIVE JUROR: I have not.

15 THE COURT: Have you ever been a Grand Juror?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Have you ever been involved a criminal
18 case as a complainant, defendant or witness?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Can you listen to the evidence, follow
21 my instructions and render a fair and impartial verdict?

22 PROSPECTIVE JUROR: Yes, I can.

23 THE COURT: What number are you?

24 PROSPECTIVE JUROR: 30.

25 THE COURT: No, you are not 30.

1 PROSPECTIVE JUROR: I wish. I also live in Staten
2 Island for over 30 years. And I have two children. One is 33
3 and I have one going to be 19 by the end of February. She is
4 in college.

5 THE COURT: What does the 30-year-old do?

6 PROSPECTIVE JUROR: He works for Key
7 Span Energy.

8 THE COURT: What does your husband do?

9 PROSPECTIVE JUROR: He is an independent limousine
10 driver.

11 THE COURT: What education have you had?

12 PROSPECTIVE JUROR: I have a Bachelor in Fine Arts
13 in Interior Design.

14 THE COURT: What is your occupation?

15 PROSPECTIVE JUROR: Right now, I'm baby-sitting for
16 my next-door neighbor's baby. And she needs me.

17 THE COURT: She needs you.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: It sounds like you are spoiling that
20 child.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Have you ever sat on a jury before?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Have you ever been a Grand Juror?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Have you ever been involved in a
2 criminal case as a complainant, defendant or witness?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Can you listen to the evidence, follow
5 my instructions and render a fair and impartial verdict if
6 chosen?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Next.

9 PROSPECTIVE JUROR: Juror 23. I live in Staten
10 Island 11 years. Married 22 years. Two children.

11 THE COURT: What does your wife do?

12 PROSPECTIVE JUROR: AIG Insurance Company.

13 MR. ROSEN: I didn't hear that.

14 PROSPECTIVE JUROR: AIG Insurance Company.

15 THE COURT: What do the kids do?

16 PROSPECTIVE JUROR: My son is 20 years old, a
17 college student. My daughter is in junior high. And I work
18 in the Post Office.

19 THE COURT: What is your education, how much
20 schooling have you had?

21 PROSPECTIVE JUROR: High School G.E.D..

22 THE COURT: Have you ever sat on a jury before?

23 PROSPECTIVE JUROR: Yes, two-and-a-half years ago.

24 THE COURT: Where?

25 PROSPECTIVE JUROR: Staten Island.

1 THE COURT: So it was in state court?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Was it a criminal or civil case?

4 PROSPECTIVE JUROR: Civil, but I never catch the
5 name.

6 THE COURT: Have you ever been a complainant,
7 defendant or a witness in a criminal case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Can you listen to the evidence in this
10 case, follow my instructions and render a fair and impartial
11 verdict?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Next.

14 PROSPECTIVE JUROR: Number 24. I live in Queens 60
15 years. I am a widower. I was married for close to 37 years.
16 I have no children.

17 THE COURT: Your occupation?

18 PROSPECTIVE JUROR: I worked for the IRS. I retired
19 in 1986.

20 THE COURT: What is your schooling?

21 PROSPECTIVE JUROR: I got BBA Degree from CCNY.

22 THE COURT: You ever sat on a jury before?

23 PROSPECTIVE JUROR: Yes. State. It was a criminal
24 case. We had a verdict in two days.

25 THE COURT: How long ago was that?

1 PROSPECTIVE JUROR: About ten years.

2 THE COURT: Have you ever been a complainant,
3 defendant or witness in a criminal case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Can you listen to the evidence, follow
6 my instructions and render a fair and impartial verdict if you
7 were chosen?

8 PROSPECTIVE JUROR: Absolutely.

9 THE COURT: Next.

10 PROSPECTIVE JUROR: I am 25. I live in Brooklyn. I
11 have lived there for 30 years. I am a teacher. I am not
12 married. I have a BA Degree in Psychology from CCNY. I sat
13 on a jury here about two years ago.

14 THE COURT: In this building?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Who was the Judge?

17 PROSPECTIVE JUROR: I don't remember.

18 THE COURT: I asked that question one time and
19 someone said, you.

20 Two years ago, was it criminal or civil?

21 PROSPECTIVE JUROR: Criminal.

22 THE COURT: Did it come to a verdict?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You ever been a Grand Juror?

25 PROSPECTIVE JUROR: No.

1 THE COURT: You were a juror before. Have you ever
2 been involved in a criminal case as a complainant, defendant
3 or a witness?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Can you listen to my instructions,
6 follow the evidence and render a fair and impartial verdict if
7 you were chosen?

8 PROSPECTIVE JUROR: Yes. But I also wanted to let
9 you know that I have a trip coming up on Friday that's out of
10 town.

11 THE COURT: Where are you going?

12 PROSPECTIVE JUROR: Washington, D.C.

13 THE COURT: Washington where?

14 PROSPECTIVE JUROR: Washington, D.C.

15 THE COURT: I can't stand you.

16 MR. ROSEN: No objection.

17 THE COURT: Mr. Ashley?

18 MR. ASHLEY: No objections, Your Honor.

19 MR. SEIGEL: None, Judge.

20 THE COURT: Have a good time.

21 (Prospective Juror Number 25 excused.)

22 THE CLERK: Juror Number 35.

23 THE COURT: Have you heard my questions, Number 35?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Any responses to any of them?

1 PROSPECTIVE JUROR: Yes. I worked in the Manhattan
2 DA's office for ten years as a paralegal.

3 THE COURT: I guess you know me.

4 PROSPECTIVE JUROR: No.

5 THE COURT: What are you doing now?

6 PROSPECTIVE JUROR: I am a procurement specialist
7 for MTA Transit.

8 THE COURT: Where do you live?

9 PROSPECTIVE JUROR: Brooklyn.

10 THE COURT: How long have you lived there?

11 PROSPECTIVE JUROR: All my life.

12 THE COURT: You are married?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Do you have any kids?

15 PROSPECTIVE JUROR: A son.

16 THE COURT: How old?

17 PROSPECTIVE JUROR: 21.

18 THE COURT: What does he do?

19 PROSPECTIVE JUROR: He is a full-time college
20 student.

21 THE COURT: What is your education?

22 PROSPECTIVE JUROR: I have a Bachelor's Degree in
23 Business Administration.

24 THE COURT: Business Administration?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: What school?

2 PROSPECTIVE JUROR: Baruch College.

3 THE COURT: Have you ever sat on a jury before?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Federal or state?

6 PROSPECTIVE JUROR: Civil.

7 THE COURT: Federal or state?

8 PROSPECTIVE JUROR: The Supreme Court.

9 THE COURT: That is state civil.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: How long ago has that been?

12 PROSPECTIVE JUROR: Well, one was six years ago and
13 the other was four years before that.

14 THE COURT: Did they come to a resolution?

15 PROSPECTIVE JUROR: One came to a resolution and the
16 other one was settled.

17 THE COURT: Could you listen to the evidence in this
18 case, follow my instructions and render a fair and impartial
19 verdict if chosen?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you.

22 Next.

23 PROSPECTIVE JUROR: Number 26. I live in Suffolk
24 County.

25 THE COURT: How long?

1 PROSPECTIVE JUROR: About a month now. Prior to
2 that, I lived in Queens.

3 THE COURT: How long did you live there?

4 PROSPECTIVE JUROR: About 30 years, give or take.

5 THE COURT: Married?

6 PROSPECTIVE JUROR: Yes, married. I have two
7 children. One is 8 and the other is 20 months.

8 THE COURT: What does the 21-year-old do?

9 PROSPECTIVE JUROR: No. 20 months. 20 months.

10 THE COURT: 20 months. Okay. What does your wife
11 do?

12 PROSPECTIVE JUROR: Right now she is at home
13 watching the 20-month-old.

14 THE COURT: He is probably watching her.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What is your education?

17 PROSPECTIVE JUROR: I have a Doctorate Degree in
18 Engineering.

19 THE COURT: What do you do for a living?

20 PROSPECTIVE JUROR: I work for the New York City
21 Transit Authority.

22 THE COURT: Have you ever sat on a jury before?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Have you ever been a Grand Juror?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Have you ever been involved in a
2 criminal case as a complainant, defendant or witness?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Could you listen to the evidence in this
5 case, follow my instructions as to the law and render a fair
6 and impartial verdict?

7 PROSPECTIVE JUROR: I believe that I could.

8 THE COURT: Sir.

9 PROSPECTIVE JUROR: 27.

10 THE COURT: Where do you live?

11 PROSPECTIVE JUROR: Brooklyn.

12 THE COURT: How long?

13 PROSPECTIVE JUROR: 28 years.

14 THE COURT: Married?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What does your wife do?

17 PROSPECTIVE JUROR: Nothing.

18 THE COURT: What?

19 PROSPECTIVE JUROR: She is a nurse.

20 THE COURT: What is your occupation?

21 PROSPECTIVE JUROR: Public safety officer.

22 THE COURT: We spoke about that before.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Do you have children?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: How old?

2 PROSPECTIVE JUROR: 24 and 21.

3 THE COURT: What do they do?

4 PROSPECTIVE JUROR: 24 is an engineer. And 21 years
5 is in college.

6 THE COURT: What kind of an engineer?

7 PROSPECTIVE JUROR: Civil engineer.

8 THE COURT: Have you ever sat on a jury before?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Grand Jury?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Can you listen to the evidence, follow
13 my instructions as to the law and render a fair and impartial
14 verdict?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you.

17 Next.

18 PROSPECTIVE JUROR: I am 28.

19 THE COURT: Where do you live?

20 PROSPECTIVE JUROR: Queens, New York.

21 THE COURT: Queens?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: How long have you lived there?

24 PROSPECTIVE JUROR: 40 years.

25 THE COURT: Are you married?

1 PROSPECTIVE JUROR: Single.

2 THE COURT: So you don't know; is that right?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: I have some friends like that. Do you
5 have any children?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: How many?

8 PROSPECTIVE JUROR: Two.

9 THE COURT: How old?

10 PROSPECTIVE JUROR: 23 and 24.

11 THE COURT: What do they do?

12 PROSPECTIVE JUROR: They are both in school.

13 THE COURT: What is your schooling?

14 PROSPECTIVE JUROR: Undergraduate and High School
15 diploma.

16 THE COURT: From where?

17 PROSPECTIVE JUROR: York College.

18 THE COURT: Did you get your degree there or are you
19 still attending?

20 PROSPECTIVE JUROR: I still have to get some
21 credits.

22 THE COURT: How many?

23 PROSPECTIVE JUROR: I still to have achieve some
24 credits.

25 THE COURT: You are going to get them, right?

1 PROSPECTIVE JUROR: Yes. Thank you.

2 THE COURT: Have you ever served on a jury before?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: You ever been a Grand Juror?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: You ever been involved in a criminal
7 case as a complainant, defendant or witness?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Can you listen to the evidence, follow
10 my instructions as to the law and render a fair and impartial
11 verdict?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Counsel.

14 (Whereupon a side-bar conference was conducted.)

15 (Matter continued on the next page.)
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1 THE COURT: He is.

2 MR. ROSEN: With respect to Juror Number 29.

3 THE COURT: What is the number?

4 MR. ROSEN: 29.

5 MR. ASHLEY: But you mean number 20.

6 THE COURT: Juror 20?

7 MR. ROSEN: 29.

8 THE COURT: In seat 29?

9 MR. ROSEN: He said his nephew is an FBI agent who
10 comes into this building. I would like you to ask, most
11 respectfully, a little more about comes into this building and
12 maybe they know these agents. I don't know.

13 Then with respect to Juror Number 24, who is sitting
14 in whatever seat.

15 THE COURT: Let me do 20. Juror Number 20.

16 THE COURT: Who is seated in seat 20.

17 Who is Number 29?

18 PROSPECTIVE JUROR: Here.

19 THE COURT: You have a nephew who is an FBI Agent
20 that comes into this building?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What do you mean by comes into this
23 building?

24 PROSPECTIVE JUROR: To go to court, I guess. I don't
25 know.

1 THE COURT: What kind of work does he do for the
2 FBI?

3 PROSPECTIVE JUROR: I don't know.

4 THE COURT: How do you know he comes into this
5 building?

6 PROSPECTIVE JUROR: I was told he does. I was here
7 last Monday and I got excused. So I associated that because I
8 know someone in the FBI.

9 THE COURT: You don't know what he does but you just
10 know that he comes into this building?

11 PROSPECTIVE JUROR: He goes on cases.

12 MR. ROSEN: He must work for the U.S. Attorney's
13 Office.

14 MR. ASHLEY: Do we know why he was excused?

15 THE COURT: I don't know. How would he know?

16 MR. ASHLEY: Unless they told him.

17 THE COURT: I excuse them here, I don't tell them.

18 MR. SEIGEL: We have a couple of follow-ups, as
19 well.

20 THE COURT: Let me finish with this.

21 MR. ROSEN: Following up on this very carefully
22 constructed chart. Juror number 24 who sits in seat --

23 THE CLERK: 24.

24 MR. ROSEN: Told us that he is with the IRS or that
25 he was with the IRS through '86. I would like to know what he

1 did for the IRS, whether he worked with these people on
2 criminal cases, please.

3 THE COURT: You worked for the IRS, sir?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What did you do with the IRS?

6 PROSPECTIVE JUROR: Joint committee cases.

7 In those days, it was any taxpayer that got a refund
8 of \$100,000 or more had to have a special intense examination
9 over many years. Now I think they upped it to millions as far
10 as refunds.

11 THE COURT: You left the IRS in the 80's?

12 PROSPECTIVE JUROR: In 1986.

13 THE COURT: Okay. Were you in the criminal
14 investigation?

15 PROSPECTIVE JUROR: Absolutely not. The regular
16 examination program.

17 THE COURT: All right.

18 MR. ROSEN: Judge Johnson, with respect to Juror
19 Number 35 who was working at the Manhattan District Attorney's
20 Office, I would like to ask most respectfully whether through
21 that experience would align herself with prosecutors.

22 THE COURT: I asked if she can be fair.

23 THE CLERK: Seat 25.

24 THE COURT: 25. You worked in the DA's Office.

25 THE CLERK: She is 35, but seat 25.

1 MR. ROSEN: Number 35.

2 THE COURT: You are Number 30?

3 PROSPECTIVE JUROR: 35.

4 THE COURT: You worked in the DA's Office?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What did you do for the DA's Office?

7 PROSPECTIVE JUROR: Helped him prepare cases for
8 trial.

9 THE COURT: The fact that you worked for the DA's
10 Office, could you be fair and impartial in this case?

11 PROSPECTIVE JUROR: Yes, I could.

12 THE COURT: Working in the DA's Office, did it give
13 you any attitudes toward criminal cases or towards defendants?

14 PROSPECTIVE JUROR: No.

15 THE COURT: You did that for how long?

16 PROSPECTIVE JUROR: I did it for ten years.

17 THE COURT: Did you get your degree while in the
18 DA's Office?

19 PROSPECTIVE JUROR: No, I had my degree before being
20 in the DA's Office.

21 THE COURT: Then you moved on?

22 PROSPECTIVE JUROR: I moved on.

23 THE COURT: Okay. Mr. Rosen.

24 MR. ROSEN: Judge, the last one that I have here is
25 Juror Number 13. I think she hesitated, if I am not mistaken,

1 in answering about her ability to be fair. Just to finish up
2 the woman next door, Number 14, I didn't really think she
3 understood what Your Honor was saying. 13 and 14.

4 THE CLERK: 13 seat 13.

5 MR. SEIGEL: 13.

6 THE COURT: What do you want me to ask her?

7 MR. ROSEN: She hesitated when Your Honor asked if
8 she can be fair.

9 THE COURT: Number 13.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: My question to you is, as we sit here,
12 we are going to be presenting evidence. Testimony and
13 exhibits are going to be coming in. Can you be fair and
14 impartial if you were selected for the jury?

15 PROSPECTIVE JUROR: No.

16 THE COURT: You can not be?

17 PROSPECTIVE JUROR: No.

18 THE COURT: You can not be fair and impartial?

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: We will select you for another jury.

21 MR. ROSEN: I wasn't sure. It is hard to hear
22 sometimes.

23 (Prospective Juror Number 13 excused.)

24 THE COURT: She goes down to the Clerk's Office.

25 THE CLERK: Juror 36.

1 THE COURT: Have you heard my questions?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Do you have any responses to any of
4 those questions?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Where do you live?

7 PROSPECTIVE JUROR: Suffolk County.

8 THE COURT: How long have you lived there?

9 PROSPECTIVE JUROR: Four years.

10 THE COURT: What is your occupation?

11 PROSPECTIVE JUROR: Driver for a milk company.

12 THE COURT: For a milk company?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What does your wife do?

17 PROSPECTIVE JUROR: She works part-time in an office
18 in accounts receivable.

19 THE COURT: Do you have any children?

20 PROSPECTIVE JUROR: Three.

21 THE COURT: How old?

22 PROSPECTIVE JUROR: 16, 13 and 7.

23 THE COURT: What is your education?

24 PROSPECTIVE JUROR: High School and one year of
25 college.

1 THE COURT: What college?

2 PROSPECTIVE JUROR: Nassau.

3 THE COURT: Have you ever served on a jury before?

4 PROSPECTIVE JUROR: Yes, I have.

5 THE COURT: State or federal?

6 PROSPECTIVE JUROR: State criminal.

7 THE COURT: Did it come to a resolution?

8 PROSPECTIVE JUROR: Yes, it did.

9 THE COURT: How long ago was that?

10 PROSPECTIVE JUROR: Over ten years.

11 THE COURT: Have you ever served on a Grand Juror?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Have you ever been involved in a
14 criminal case as a complainant, defendant or witness?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Is there any reason why you could not
17 listen to this evidence, follow my instructions, and be fair
18 and impartial if you were chosen?

19 PROSPECTIVE JUROR: No.

20 THE COURT: You are 13 and 14.

21 Ma'am, can you listen to the evidence in this
22 case --

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: -- follow my instructions as to the law
25 and be fair and impartial if you were chosen?

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PROSPECTIVE JUROR: Yes.

THE COURT: Okay.

(Side-bar conference continued.)

(Matter continued on the next page.)

1 MR. ASHLEY: Your Honor, can we ask Juror 28 what
2 his occupation was? Did he ever indicate what he did for a
3 living? The last row.

4 THE COURT: I think he did.

5 The guy that doesn't know if he is single or not,
6 what is your occupation?

7 PROSPECTIVE JUROR: Ex-part-time military person.

8 THE COURT: What do you now?

9 PROSPECTIVE JUROR: I am unemployed now.

10 THE COURT: He is unemployed.

11 MR. ROSEN: Find out if he was an MP or what.

12 MR. SEIGEL: What did he say he did in the military?

13 THE COURT: What did you do in the military?

14 PROSPECTIVE JUROR: A lot of doing wire
15 communication.

16 THE COURT: What did you do, field and wire
17 communication?

18 PROSPECTIVE JUROR: Just hooking up telephones and
19 wires.

20 THE COURT: Okay.

21 MR. ASHLEY: Your Honor, with respect to Juror
22 Number 20, I think it was indicated that she served on a Grand
23 Jury. Can we get an impression whether that would affect her
24 ability to be in a jury case.

25 THE COURT: Number 20.

1 MR. SEIGEL: Your Honor, I think that is the same
2 fellow whose nephew is with the FBI. I think he said twenty
3 years ago he sat on a Grand Jury.

4 THE COURT: You served on the Grand Jury before,
5 Number 20?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Could you be fair and impartial serving
8 on what they call as a Petit Jury?

9 PROSPECTIVE JUROR: Yes.

10 It was twenty years ago I served.

11 MR. SEIGEL: Your Honor, we have the same issue that
12 Mr. Rosen raised with Number 14. I question really her
13 ability to understand. I have found her very hard to
14 understand. My concern is she didn't understand the questions
15 and won't be able to be a full participant in the
16 deliberations. I would ask you to pursue, if you would, her
17 ability to really understand and comprehend what you said.

18 THE COURT: Number 14.

19 Do you understand English that well?

20 PROSPECTIVE JUROR: Yes, somewhat.

21 THE COURT: What is that?

22 PROSPECTIVE JUROR: Somewhat. I understand it well.

23 THE COURT: There will be testimony coming in from
24 witnesses who will be testifying in English what they said,
25 what they saw, and what they heard. Will you be able to

1 understand and comprehend what they are saying?

2 PROSPECTIVE JUROR: Yes.

3 MR. SEIGEL: I would still challenge her for cause.
4 The government feels she did not understand the court's
5 questioning.

6 THE COURT: No.

7 MR. SEIGEL: Maybe Mr. Rosen agrees with me?

8 THE COURT: It is one of the few times you will
9 agree with each other.

10 MR. SEIGEL: Probably the only time. The woman, I
11 believe, she is Number 16. She was a juror 8 to 12 times
12 including the grand jury. That is a breadth of experience. I
13 would like to know the kind of cases, what kind of Grand Jury
14 it was.

15 THE COURT: Which number?

16 MR. SEIGEL: I believe Number 16. She said she had
17 a lot of Grand Jury experience. What kind of Grand Jury,
18 whether it was a special grand jury.

19 THE COURT: Number 16. You have served about eight
20 to twelve times on juries and grand juries?

21 PROSPECTIVE JUROR: Not on one particular jury, as a
22 whole.

23 THE COURT: That is what I am saying. It was over
24 the years.

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: What kind of cases did you hear?

2 PROSPECTIVE JUROR: All of them, criminal, civil,
3 racketeering cases.

4 THE COURT: Was this in state court?

5 PROSPECTIVE JUROR: It was state, it was in the
6 Supreme, all of them. Federal.

7 THE COURT: It was federal?

8 PROSPECTIVE JUROR: Yes, I served federal, too.

9 THE COURT: In this building?

10 PROSPECTIVE JUROR: Yes, about four years ago. It
11 was a criminal case, a mobster case.

12 THE COURT: Okay.

13 MR. SEIGEL: I assume my colleagues will join in
14 dismissing her?

15 MR. ROSEN: Let me talk to Mr. Ashley on this.

16 MR. ASHLEY: We all agree, Your Honor, that she
17 should be excused.

18 MR. ROSEN: We agree.

19 THE COURT: Okay.

20 MR. ROSEN: With the Court's permission.

21 THE COURT: Go ahead.

22 (Prospective Juror Number 16 was excused.)

23 THE CLERK: Please return to Central Jury Room.

24 (Whereupon the side-bar conference was concluded.)

25 (Matter continued on the next page.)

1 (Matter continued in Open Court.)

2 THE CLERK: Number 37.

3 THE COURT: Number 37, have you heard my questions.

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Any response to any of them?

6 PROSPECTIVE JUROR: I can answer honestly to my best
7 of anything that you need to ask. I am an ex-wife of a Marine
8 for 21 years.

9 THE COURT: An ex what?

10 PROSPECTIVE JUROR: Ex-wife of a Marine for 21
11 years.

12 THE COURT: You can have a seat.

13 PROSPECTIVE JUROR: Oh, thank you.

14 THE COURT: Where do you live?

15 PROSPECTIVE JUROR: In Brooklyn.

16 THE COURT: How long have you lived there?

17 PROSPECTIVE JUROR: Thirteen years.

18 THE COURT: Are you married?

19 PROSPECTIVE JUROR: No, I am divorced.

20 THE COURT: What did your ex-husband do?

21 PROSPECTIVE JUROR: He was a Master Sergeant in the
22 Marine Corps.

23 THE COURT: What is he doing now?

24 PROSPECTIVE JUROR: He is a lieutenant in Robinson
25 State Prison, the jail.

1 THE COURT: What?

2 PROSPECTIVE JUROR: A prison. He is a lieutenant in
3 a prison.

4 THE COURT: Which prison?

5 PROSPECTIVE JUROR: Robinson in Endfield,
6 Connecticut.

7 THE COURT: What is your occupation?

8 PROSPECTIVE JUROR: A jack of all trades.

9 THE COURT: Any children?

10 PROSPECTIVE JUROR: Yes, three: 33, 28, and 13.

11 THE COURT: What do the adults do for a living?

12 PROSPECTIVE JUROR: One is a stockbroker. One moved
13 upstate because she got married, and she is a medical
14 assistant. My youngest, she is in school.

15 THE COURT: What is your education?

16 PROSPECTIVE JUROR: A year of college. Went to
17 school for dental assistant. Was a hairdresser. I can do
18 your hair and nails at the same time.

19 THE COURT: You can't do my hair anymore.

20 PROSPECTIVE JUROR: Whatever I could go to school
21 for. I was a substitute teacher in child education classes.

22 THE COURT: Where?

23 PROSPECTIVE JUROR: In North Carolina.

24 THE COURT: In Lejune?

25 PROSPECTIVE JUROR: Cherry Point.

1 THE COURT: Cherry Point?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Have you ever sat on a jury before?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Have you ever been a grand juror?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Have you ever been involved in a
8 criminal case as complainant, defendant or a witness?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Can you listen to the evidence here,
11 listen to my instructions and render a fair and impartial
12 verdict if you are chosen?

13 PROSPECTIVE JUROR: Yes, sir.

14 (Whereupon a side-bar conference is conducted.)

15 (Matter continued on the next page.)

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1 THE COURT: Let's go.

2 MR. SEIGEL: Judge, if you could, I am sorry. There
3 were a couple of follow-up questions on a couple of people's
4 occupations we didn't get. We didn't get the occupation of
5 14. If you guys have it, I will take it. I just didn't get
6 it or the occupation of 15. We didn't get that.

7 MR. ASHLEY: I have her husband's occupation and not
8 her's.

9 THE COURT: Number 14.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: What is your occupation?

12 PROSPECTIVE JUROR: I am a chef.

13 THE COURT: In a restaurant?

14 PROSPECTIVE JUROR: I am working for Bishop
15 Lackland.

16 THE COURT: The school?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Number 15, what is your occupation?

19 PROSPECTIVE JUROR: I am a health worker. A health
20 worker.

21 MR. SEIGEL: Your Honor, can we have two minutes to
22 confer and come up with a panel?

23 THE COURT: You know how it goes, you get one and
24 they get four. You get two, they get four. You get two, the
25 last two, and they get the last one.

1 MR. ROSEN: It is not two.

2 THE CLERK: One, four, two, four.

3 MR. ROSEN: Okay.

4 THE CLERK: I will tell you.

5 THE COURT: What is happening, ladies and gentlemen,
6 we are going to select twelve of you. That is what the law
7 allows, twelve jurors out of all of you. And then we will
8 select alternates from them. Then we will have our jury.

9 Okay. For those of you whose stomachs are growling,
10 we will select the jurors and select the alternates, and then
11 we will let you go. I am like a lot of you. I am on a
12 seafood diet, I see food I eat it.

13 Ladies and gentlemen, as I told you before I have
14 another jury out. We will be on the other side when they get
15 a verdict. We will be in the brand new courtroom.

16 PROSPECTIVE JUROR: When will the case start?

17 THE COURT: I probably will start tomorrow. Let you
18 get something to eat and go home.

19 Let's go.

20 MR. ROSEN: The government goes first.

21 THE CLERK: Say the prospective juror number, just
22 the juror number.

23 MR. ASHLEY: I didn't take it down the jury number.

24 MR. ROSEN: I got them.

25 MR. ASHLEY: I don't have them.

1 MR. SEIGEL: The first one is Juror No. 4.

2 MR. ROSEN: You are taking off Juror 4?

3 MR. SEIGEL: Yes.

4 MR. ASHLEY: Which one?

5 MR. SEIGEL: She is in seat four and is No. 4.

6 THE CLERK: You got four.

7 MR. ROSEN: I have three challenges for cause.

8 THE COURT: There is no cause challenge now.

9 MR. ROSEN: What do you mean there is no cause
10 challenge? I didn't make the cause challenge.

11 THE COURT: Make a challenge for cause.

12 MR. ROSEN: Number 6, the lady from the Joint Task
13 Force and the Police Department. I would suggest that that
14 kind of a background shouldn't sit in this kind of a case.

15 THE COURT: I will deny, she said she could be fair
16 and impartial.

17 MR. ROSEN: Juror number 14. I still honestly
18 believe she doesn't understand.

19 MR. SEIGEL: We join in that application, Judge.

20 THE COURT: I will leave her there. You made the
21 same application and I denied it.

22 MR. ROSEN: The last cause, if I can find it, is
23 Juror No. 29. It is the gentleman who is the FBI relative,
24 that comes into this building, and can't tell us what he does
25 or doesn't do. It is just too close. This is an FBI case and

1 we have FBI agents on it.

2 THE COURT: He said he can be fair and impartial.

3 MR. ROSEN: I understand, Judge, that is for Your
4 Honor to determine from the facts whether that is a candid
5 observation.

6 THE COURT: I will not do it for cause.

7 THE CLERK: You have preemptory challenges. You
8 have four together for the defendant.

9 MR. ASHLEY: Your Honor, Juror No. 6.

10 MR. ROSEN: The FBI Agent.

11 THE CLERK: Who seat 6 and Juror 6.

12 MR. ASHLEY: And sitting in seat No. 7.

13 MR. ROSEN: That is No. 7.

14 MR. ASHLEY: Okay. We are talking about the one
15 sitting in seat No. 12.

16 THE CLERK: Seat 12.

17 MR. ROSEN: The background.

18 THE CLERK: Twelve is 12.

19 MR. ROSEN: Twelve.

20 THE CLERK: Twelve happens to be 12.

21 MR. ASHLEY: You don't agree with that.

22 Let me caucus for one second, Your Honor. All
23 right. You go ahead.

24 MR. ROSEN: Juror No. 37, who is sitting in seat --

25 THE CLERK: Seat 16.

1 MR. ROSEN: The Marine or something.

2 THE COURT: Here.

3 MR. ROSEN: You talking about this one who we claim
4 doesn't understand?

5 MR. ASHLEY: Yes.

6 MR. ROSEN: Then we need one more.

7 MR. ROSEN: I have that as the IRS agent. Maybe I
8 am wrong. It is the AIG Insurance or the IRS.

9 MR. ASHLEY: Either one.

10 MR. ROSEN: Juror No. 23.

11 THE CLERK: 23, seat 23; Juror 37, seat No. 16;
12 Juror No. 7, seat 7; Juror No. 6, seat 6. And you have Juror
13 4, seat 4.

14 MR. SEIGEL: Now we get two.

15 THE COURT: You get two.

16 MR. SEIGEL: Judge, our two are going to be No. 9,
17 who is I think actually No. 9; and No. 18, who is actually No.
18 18.

19 MR. ROSEN: Which ones?

20 MR. SEIGEL: It was 9 and 18.

21 THE COURT: You have four more.

22 Let's go.

23 MR. ROSEN: Judge, we are consulting. The people
24 are still in the box. I can't determine who is there.

25 MR. ASHLEY: We are trying to figure who is out and

1 who is in.

2 MR. ROSEN: I don't seem to have a number for juror
3 and seat No. 19.

4 MR. ASHLEY: The lady who is sitting on the floor in
5 the back in the last row, her number or seat number.

6 MS. MAYER: The one that is seat 19, Juror 34 in
7 seat 19.

8 MR. ASHLEY: That is seat 19.

9 MR. ROSEN: Okay.

10 MR. ASHLEY: That is seat 19.

11 MR. ROSEN: One more moment, Judge.

12 THE COURT: How many alternates do you want?

13 MR. SEIGEL: I was thinking three.

14 THE COURT: Get four.

15 We will put eight in and you will get two apiece.

16 Okay. Let's go.

17 MR. ASHLEY: Judge, I can only give the seat
18 numbers. Number 19.

19 THE CLERK: 19 is No. 34.

20 MR. ASHLEY: 20.

21 THE CLERK: 20 is 29.

22 MR. ROSEN: What does it do? Who is that so I don't
23 screw up here.

24 MS. MAYER: You inquired about the FBI --

25 MR. ROSEN: The FBI, good.

1 THE CLERK: You have two more.

2 MR. ROSEN: Juror number.

3 MR. ASHLEY: 25.

4 THE CLERK: 25 is Juror Number 35. You have one
5 more.

6 THE COURT: Who is your last one?

7 MR. ASHLEY: The difficulty, Judge, is that these
8 people are not getting out of the seat. So it was hard to
9 remember the face of who is on and who is off. That is the
10 difficulty that we would have. The FBI Agent.

11 MR. ROSEN: It is juror 29 --

12 THE CLERK: Juror 29.

13 MR. ROSEN: Juror 29. Juror 34 and Juror 35. Juror
14 24.

15 MR. ASHLEY: I have 29, 25, and 24.

16 MR. ROSEN: That is the IRS man.

17 THE CLERK: Who was the last one?

18 MR. ROSEN: Juror 24, the IRS man.

19 THE CLERK: 24.

20 MR. ROSEN: We got to have a better system than
21 this.

22 MR. ASHLEY: Perhaps, the people who are excused
23 should be asked to get up so we can see the jurors.

24 THE COURT: We have only have two more to go. We
25 will let you go soon.

1 A JUROR: We are hungry.

2 MR. SEIGEL: The government is No. 5 who is 31.

3 THE CLERK: 5 is juror 31.

4 MR. SEIGEL: The person in seat 11 who is

5 No. 32.

6 THE CLERK: 11 who is 32.

7 MR. ROSEN: That was 32 and 31.

8 THE COURT: You have the last two.

9 MR ROSEN: Judge Johnson, I hear from the audience
10 that the jurors are hungry. I don't want them to think we are
11 delaying their lunch. I need to take a minute. I will do two
12 in one shot, two together.

13 THE CLERK: You get two more.

14 MR. SEIGEL: You get two more and we get one more.

15 MR. ROSEN: I would like to talk to my co-counsel.

16 THE COURT: We will be with you in a second, ladies
17 and gentlemen.

18 MR. ROSEN: 14.

19 THE CLERK: 14 is 14.

20 MR. ASHLEY: Number 28.

21 THE CLERK: 28 is 28.

22 MR. SEIGEL: We get our last now.

23 15.

24 MR. ROSEN: Which one?

25 MR. SEIGEL: 15. And she is in --

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THE CLERK: 15 is in 15.

(Side-bar conference concluded.)

(Matter continued on the next page.)

1 (In Open Court:

2 THE CLERK: If I call your number you are excused,
3 please return to the Central Jury Room.

4 THE CLERK: Juror No. 15, Juror No. 32, Juror No.
5 31, Juror No. 28, Juror No. 14, Juror No. 18 -- that is 18.
6 Juror No. 9, Juror No. 4, Juror No. 24, Juror No. 34, Juror
7 No. 35, Juror No. 6, Juror No. 29, Juror No. 7, Juror No. 37,
8 Juror No. 23.

9 I am going to give you your new juror number. You
10 will remember two numbers now.

11 Juror No. 1 is Juror No. 1, Juror No. 2 is Juror No.
12 2, Juror No. 3 is Juror No. 3, Juror No. 8 is Juror No. 4,
13 Juror No. 10 is now Juror No. 5, Juror No. 12 is going to be
14 6, Juror No. 36 is going to be 7, Juror No. 17 is Juror 8,
15 Juror No. 21 will be 9, Juror No. 30 will be 10, Juror Number
16 26 will be 11, Juror No. 27 will be 12.

17 Okay.

18 THE COURT: The jury satisfactory to the defendants?

19 MR. ROSEN: Yes, Your Honor.

20 MR. ASHLEY: Yes, Your Honor.

21 THE COURT: Satisfactory to the government?

22 MR. SEIGEL: Yes, Your Honor.

23 THE COURT: I am going to address myself to the
24 people in the audience. We are going to pick some alternates.
25 I can let you go to lunch and you will come back within an

1 hour or you can stay about fifteen minutes and then you can go
2 home.

3 THE JURORS: Stay.

4 THE COURT: We will give you a five minute break.

5 All right. We will give you a five-minute break.

6 Don't talk to anybody. We will see you tomorrow.

7 You will come here.

8 (Open Court - Jurors Out)

9 THE CLERK: Your Honor, No. 75 is the woman, she is
10 there. Can you excuse her to go to the bathroom and come
11 right back?

12 THE COURT: Number 75. Yeah, go ahead.

13 (Brief Recess)

14 THE COURT: What is going to happen, ladies and
15 gentlemen, I will call you eight of you out here and then we
16 will select four of the eight. Then you will be able to go
17 home. I still have another jury.

18 Call eight, Augie.

19 THE CLERK: 38, 39, 40, 41, 42, 43, 44, 45.

20 THE COURT: Ladies and gentlemen, have you heard my
21 questions?

22 THE JURORS: Yes.

23 THE COURT: Any responses to any of those questions.

24 THE JURORS: No.

25 THE COURT: Let me begin with No. 1 and ask you.

1 Where do you live?

2 PROSPECTIVE JUROR: I live in Nassau County, 45
3 years. I am married. I am a corporate tax director. I have
4 two children.

5 THE COURT: Corporate for what agency?

6 PROSPECTIVE JUROR: It is a corporation, a
7 publishing company. I'm corporate tax director.

8 THE COURT: Okay. What does your wife do?

9 PROSPECTIVE JUROR: My wife is a housewife and a
10 volunteer.

11 THE COURT: Any children?

12 PROSPECTIVE JUROR: I have two children. One is a
13 high school teacher, City of New York, and my son is a CPA
14 with a public accounting firm.

15 THE COURT: What is your schooling?

16 PROSPECTIVE JUROR: I have a Master's Degree in
17 taxation, Saint Jones University.

18 THE COURT: Did you ever sit on a jury before?

19 PROSPECTIVE JUROR: Yes, Your Honor. Both a civil
20 and a criminal. Civil went full term and the criminal case,
21 the defendant changed his plea to guilty.

22 THE COURT: Was this state or federal?

23 PROSPECTIVE JUROR: This was state.

24 THE COURT: How long ago was that?

25 PROSPECTIVE JUROR: The criminal case was six years

1 ago and the civil case was ten years ago.

2 THE COURT: You ever been a grand juror?

3 PROSPECTIVE JUROR: No, I have not.

4 THE COURT: You ever been involved in a criminal
5 case as a complainant, a defendant or witness?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Can you listen to the evidence, follow
8 the Court's instructions and render a fair and impartial
9 verdict?

10 PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: Next.

12 PROSPECTIVE JUROR: I live in Queens. I have no
13 kids.

14 THE COURT: How long have you lived in Queens?

15 PROSPECTIVE JUROR: Thirteen years.

16 THE COURT: What does your husband do?

17 PROSPECTIVE JUROR: Not married.

18 THE COURT: Your husband is not married?

19 PROSPECTIVE JUROR: I am not married; I am single.

20 THE COURT: No children?

21 PROSPECTIVE JUROR: No children.

22 THE COURT: What is your education?

23 PROSPECTIVE JUROR: A year and a half of college,
24 Kingsborough.

25 THE COURT: What do you do now?

1 PROSPECTIVE JUROR: Security.

2 THE COURT: Any firm?

3 PROSPECTIVE JUROR: The library.

4 THE COURT: The Brooklyn or Queens?

5 PROSPECTIVE JUROR: Brooklyn.

6 THE COURT: Have you ever sat on a jury before?

7 PROSPECTIVE JUROR: No.

8 THE COURT: A grand jury?

9 PROSPECTIVE JUROR: No.

10 THE COURT: You ever been involved in a criminal
11 case as a defendant, complainant or a witness?

12 PROSPECTIVE JUROR: One time I testified in front of
13 a grand jury.

14 THE COURT: How long ago was that?

15 PROSPECTIVE JUROR: Thirteen years.

16 THE COURT: What was that in reference to?

17 PROSPECTIVE JUROR: Someone used my sister's name to
18 purchase a house.

19 THE COURT: To purchase a house?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What happened to that person?

22 PROSPECTIVE JUROR: I don't know.

23 THE COURT: Could you listen to the evidence in this
24 case, follow the Court's instructions and render a fair and
25 impartial verdict?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you. Next.

3 PROSPECTIVE JUROR: I am No. 40.

4 THE COURT: Where do you live?

5 PROSPECTIVE JUROR: I have live in Queens. I am
6 married. I have two children. I have one son, one daughter,
7 is 7 and 10.

8 THE COURT: What does your wife do?

9 PROSPECTIVE JUROR: My wife is a receptionist for a
10 private doctor.

11 THE COURT: What do you do?

12 PROSPECTIVE JUROR: I am a school bus driver.

13 THE COURT: What is your education?

14 PROSPECTIVE JUROR: High school. That's it.

15 THE COURT: What high school?

16 PROSPECTIVE JUROR: That's not here but in my
17 country.

18 THE COURT: Where?

19 PROSPECTIVE JUROR: Russia.

20 THE COURT: In Russia?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Have you ever sat on a jury before?

23 PROSPECTIVE JUROR: Never.

24 THE COURT: A grand jury?

25 PROSPECTIVE JUROR: No.

1 THE COURT: You ever been involved in a criminal
2 case as a complainant, a defendant or a witness?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Can you listen to the evidence here,
5 follow the instructions that I give you, and render a fair and
6 impartial verdict if you are chosen?

7 PROSPECTIVE JUROR: Yes, I do.

8 THE COURT: Thank you. Next.

9 PROSPECTIVE JUROR: I am 31. I live for 36 years in
10 Astoria Queens. I have two kids. My daughter --

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR: Yes, I am married.

13 THE COURT: What does your husband do?

14 PROSPECTIVE JUROR: He is a cook. My daughter is a
15 teacher in a private school. My son is a tennis coach. He is
16 a student too. I served five years ago in the grand jury.

17 THE COURT: State or federal?

18 PROSPECTIVE JUROR: This is -- I think it is
19 federal. I was there for 20 days.

20 THE COURT: What is your schooling?

21 PROSPECTIVE JUROR: My school day?

22 THE COURT: No. Your schooling. What education
23 have you had?

24 PROSPECTIVE JUROR: I have Bachelor in York College.

25 THE COURT: New York College?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: You ever sat on a jury before?

3 PROSPECTIVE JUROR: No. Just on the grand jury.

4 THE COURT: Have you ever been involved a criminal
5 case as a complainant, a defendant or a witness?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Can you listen to the evidence, follow
8 my instructions, and render a fair and impartial verdict?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Next.

11 PROSPECTIVE JUROR: I am No. 42. I live in
12 Brooklyn.

13 THE COURT: How long?

14 PROSPECTIVE JUROR: Fifteen years.

15 THE COURT: Okay. What is your occupation?

16 PROSPECTIVE JUROR: I am a letter carrier.

17 THE COURT: A mail carrier?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Are you married?

20 PROSPECTIVE JUROR: Yes, I am married.

21 THE COURT: What does your wife do?

22 PROSPECTIVE JUROR: Same thing.

23 THE COURT: She is a mail carrier too?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: What is your education?

1 PROSPECTIVE JUROR: Tenth grade.

2 THE COURT: Where?

3 PROSPECTIVE JUROR: My country, Burma.

4 THE COURT: Do you have any adult children?

5 PROSPECTIVE JUROR: I have one daughter and one son.

6 THE COURT: How old?

7 PROSPECTIVE JUROR: My son is 8, and my daughter is
8 11.

9 THE COURT: Have you ever sat on a jury before?

10 PROSPECTIVE JUROR: No.

11 THE COURT: You ever sat as a grand juror?

12 PROSPECTIVE JUROR: No.

13 THE COURT: You ever been involved in a criminal
14 case as complainant, defendant or witness?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Can you listen to the evidence, follow
17 of the Court's instructions and render a fair and impartial
18 verdict, if chosen?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Next.

21 PROSPECTIVE JUROR: I am No. 42.

22 THE COURT: Where do you live?

23 PROSPECTIVE JUROR: I live in Brooklyn.

24 THE COURT: How long have you lived there?

25 PROSPECTIVE JUROR: Twenty years ago I came from

1 Polland and I --

2 THE COURT: How long have you lived in Brooklyn?

3 PROSPECTIVE JUROR: Twenty years ago I came from
4 Polland, and I living in Brooklyn.

5 THE COURT: Are you married?

6 PROSPECTIVE JUROR: I am widow.

7 THE COURT: What did your husband do?

8 PROSPECTIVE JUROR: My husband died in Polland.

9 THE COURT: What do you do?

10 PROSPECTIVE JUROR: I am now retired.

11 THE COURT: What did you do before you retired?

12 PROSPECTIVE JUROR: What I did, I worked in a hotel.

13 THE COURT: Doing what in a hotel?

14 PROSPECTIVE JUROR: What?

15 THE COURT: What did you do in the hotel?

16 PROSPECTIVE JUROR: I was a housekeeper.

17 THE COURT: What was your schooling?

18 PROSPECTIVE JUROR: From Polland I went to high
19 school and like two years high school.

20 THE COURT: Have you ever served on a jury before?

21 PROSPECTIVE JUROR: No.

22 THE COURT: You ever been a Grand Juror?

23 PROSPECTIVE JUROR: I was in the Grand Jury two
24 years ago, but I didn't work.

25 THE COURT: Where were you? In the state or

1 federal?

2 PROSPECTIVE JUROR: I have was meeting like today.

3 THE COURT: But where?

4 PROSPECTIVE JUROR: Where? Adams Street.

5 THE COURT: Adams street?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Have you ever been involved in a
8 criminal case as a defendant, complainant or witness?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Can you listen to the evidence in this
11 case, follow my instructions and render a fair and impartial
12 verdict, if chosen?

13 PROSPECTIVE JUROR: What?

14 THE COURT: Can you do that?

15 PROSPECTIVE JUROR: No, I don't understand this
16 sentence. I don't understand it.

17 THE COURT: Counsel.

18 MR. ASHLEY: I have no objection, Your Honor.

19 MR. ROSEN: No objection.

20 MR. SEIGEL: Agreed, Judge. No objection.

21 THE COURT: Okay. We will put you on another jury.
22 What was the last number there?

23 THE CLERK: 45.

24 PROSPECTIVE JUROR: 45 I am 45.

25 THE COURT: Okay. You can go back down to the

1 Clerk's Office.

2 PROSPECTIVE JUROR: Me?

3 THE COURT: Yes.

4 PROSPECTIVE JUROR: Where?

5 THE COURT: Downstairs.

6 PROSPECTIVE JUROR: Downstairs? Okay. Thank you.

7 THE COURT: Number 46. You two guys stay where you
8 are.

9 Have you heard my questions?

10 PROSPECTIVE JUROR: Yes, I have.

11 THE COURT: Any responses to any of them? Give me
12 that card. Any responses to any of them?

13 PROSPECTIVE JUROR: Not particularly, no.

14 THE COURT: Where do you live?

15 PROSPECTIVE JUROR: I live in Brooklyn.

16 THE COURT: How long have you lived there?

17 PROSPECTIVE JUROR: All my life.

18 THE COURT: How long is that?

19 PROSPECTIVE JUROR: I am going to be 43 in May.

20 THE COURT: What is your occupation?

21 PROSPECTIVE JUROR: I work for the Department of
22 Homeland Security, Bureau of Immigration and Customs
23 Enforcement, Detention Removals Unit.

24 THE COURT: ICE?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Where do you work for them?

2 PROSPECTIVE JUROR: 26 Federal Plaza on the 9th
3 floor.

4 THE COURT: What particular division or part of ICE
5 do you work for?

6 PROSPECTIVE JUROR: Detention and Removals Unit.

7 THE COURT: Because you have this law enforcement
8 background, would this impair your ability to deliberate
9 fairly and impartially in this case, if you were chosen?

10 PROSPECTIVE JUROR: I don't believe so.

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR: No.

13 THE COURT: What is your schooling?

14 PROSPECTIVE JUROR: B.A. at New York University.

15 THE COURT: In what?

16 PROSPECTIVE JUROR: In journalism.

17 THE COURT: Have you ever served on a jury before?

18 PROSPECTIVE JUROR: No.

19 THE COURT: You ever been a grand juror?

20 PROSPECTIVE JUROR: No.

21 THE COURT: You ever been involved in a criminal
22 case as a complainant, defendant or witness?

23 PROSPECTIVE JUROR: Only at home.

24 THE COURT: At home?

25 PROSPECTIVE JUROR: I come from a strict family.

1 THE COURT: Now, is there any reason why you cannot
2 listen to the evidence, follow my instructions, and render a
3 fair and impartial verdict?

4 PROSPECTIVE JUROR: No, I don't think so.

5 THE COURT: Next.

6 PROSPECTIVE JUROR: Number 44. I have lived in
7 Staten Island for 29 years. I am single. And I am an
8 optometrist.

9 THE COURT: What is your education?

10 PROSPECTIVE JUROR: I have Bachelor's in biology and
11 Doctorate in Optometry.

12 THE COURT: Any children?

13 PROSPECTIVE JUROR: No.

14 THE COURT: What school did you attend?

15 PROSPECTIVE JUROR: Undergrad from yesterday Shiva
16 University and the Pennsylvania College of Optometry.

17 THE COURT: Have you ever sat on a jury before?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Have you sat as a grand juror?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Have you ever been involved in a
22 criminal case as a complainant, defendant or a witness?

23 PROSPECTIVE JUROR: My former employer has been
24 indicted on federal criminal charges, and I am expected to
25 testify in his trial whenever that happens.

1 THE COURT: He has a case pending?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: In this court?

4 PROSPECTIVE JUROR: I believe so.

5 THE COURT: And you are testifying for who? The
6 prosecutor?

7 PROSPECTIVE JUROR: I will testify on the
8 defendant's behalf.

9 THE COURT: The defendant's behalf?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Is there any reason why you could not
12 listen to the evidence, follow the Court's instructions and
13 render a fair and impartial verdict?

14 PROSPECTIVE JUROR: No.

15 THE COURT: When that is that trial coming up?

16 PROSPECTIVE JUROR: I don't know if there is even a
17 trial date yet. It has been pending for over a year now.

18 THE COURT: Okay. What is the defendant name in
19 that case?

20 PROSPECTIVE JUROR: Can I say?

21 THE COURT: Yes.

22 PROSPECTIVE JUROR: Mermelstein.

23 THE COURT: Oh, okay.

24 THE CLERK: That is our case.

25 THE COURT: I know. For the record, I am the Judge

1 in the case.

2 PROSPECTIVE JUROR: Before I go on, I do have plane
3 tickets Saturday. It's my wife's daughter, visit her.

4 THE COURT: I'm not touching that one.

5 THE CLERK: 47.

6 THE COURT: Have you heard my questions?

7 PROSPECTIVE JUROR: Yes, I have.

8 THE COURT: Any responses to any of them?

9 PROSPECTIVE JUROR: A couple. I am very familiar
10 and related to a number of people in law enforcement and the
11 judicial system.

12 THE COURT: The judicial system?

13 PROSPECTIVE JUROR: My wife is a lawyer and works
14 for a Judge. She is a court-attorney referee.

15 THE COURT: The fact that she is, would that impair
16 your ability to deliberate fairly and impartially in this
17 case, if you were chosen?

18 PROSPECTIVE JUROR: That wouldn't, no.

19 THE COURT: What law enforcement.

20 PROSPECTIVE JUROR: My first cousin is a DA in
21 Manhattan working on Mafia cases. And then my very close
22 friend, chief probationary officer, and actually just recently
23 retired about a year and a half ago.

24 THE COURT: Would this impair your ability to
25 deliberate fairly and impartially in this case?

1 PROSPECTIVE JUROR: Yes, it would.

2 MR. ROSEN: No objection, Judge.

3 MR. ASHLEY: No objection.

4 MR. SEIGEL: No objection.

5 THE CLERK: Juror 48.

6 THE COURT: Have you heard my questions?

7 PROSPECTIVE JUROR: Yes, I have.

8 THE COURT: Any responses?

9 PROSPECTIVE JUROR: None.

10 THE COURT: Where do you live?

11 PROSPECTIVE JUROR: Staten Island.

12 THE COURT: How long?

13 PROSPECTIVE JUROR: Thirty-five years.

14 THE COURT: You married?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What does your wife do?

17 PROSPECTIVE JUROR: She is a bookkeeper.

18 THE COURT: What is your occupation?

19 PROSPECTIVE JUROR: I am retired.

20 THE COURT: From what?

21 PROSPECTIVE JUROR: A printing business, sales.

22 THE COURT: Any children?

23 PROSPECTIVE JUROR: Two boys. They both work in
24 that same printing business.

25 THE COURT: What is your occupation?

1 PROSPECTIVE JUROR: Printing, graphics. Retired.
2 Retired from printing, graphic sales.

3 THE COURT: I meant what is your education?

4 PROSPECTIVE JUROR: Associate degree NYCC and six
5 credits from Baruch in finance.

6 THE COURT: Have you ever sat on a jury before?

7 PROSPECTIVE JUROR: No.

8 THE COURT: You ever serve as a grand juror?

9 PROSPECTIVE JUROR: No.

10 THE COURT: You ever been involved in a criminal
11 case as a complainant, a defendant or witness?

12 PROSPECTIVE JUROR: No.

13 THE COURT: If you were chosen, could you listen to
14 the evidence and follow the Court's instructions and render a
15 fair and impartial verdict?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you.

18 To the side.

19 (Whereupon a sidebar conference was conducted.)

20 (Matter continued on the next page.)
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1 (In Open Court.)

2 THE COURT: They get one, and you get two.

3 MR. ROSEN: Can I have a challenge for cause?

4 THE COURT: Who?

5 MR. ROSEN: The man from ICE.

6 THE COURT: No.

7 MR. ROSEN: You are going to deny it but number he
8 is at 26 Federal Plaza. All of the agents hang out and law
9 enforcement. They come into this building. He said he didn't
10 believe it would have an effect on him. He wasn't clear. He
11 said he didn't believe. I challenge for cause.

12 MR. ASHLEY: I agree.

13 THE COURT: Who is the fellow from ICE?

14 PROSPECTIVE JUROR: I am.

15 THE COURT: The questions is, you work in law
16 enforcement.

17 PROSPECTIVE JUROR: That is correct.

18 THE COURT: Notwithstanding that, if with you were
19 chosen for this jury, could you be fair and impartial after
20 listening to the evidence and listening to my instructions?

21 PROSPECTIVE JUROR: Absolutely.

22 THE CLERK: You go.

23 MR. SEIGEL: Number 40.

24 THE CLERK: Number 40 is.

25 MR. ASHLEY: What do we get?

1 THE COURT: Two.

2 Then they get --

3 MR. ROSEN: 46, he is the from ICE.

4 MR. ASHLEY: In terms of the number, the man in ICE
5 is number --

6 THE COURT: 46.

7 MR. ASHLEY: Number 46. And the first fellow to the
8 far right is?

9 MS. MAYER: : 38.

10 MR. ASHLEY: 38 and 46.

11 THE CLERK: You get one more.

12 THE COURT: Who is 38?

13 MR. ASHLEY: By my count that is the first juror.

14 MR. SEIGEL: 44.

15 THE COURT: Okay.

16 (Open Court - Sidebar Conference Concluded.)

17 THE CLERK: The following jurors are excused: 39,
18 41, 42, 48.

19 Is that right? I am sorry. I took the wrong
20 bundle.

21 Okay. 39, 41. No, I am doing the same thing.

22 38, 40, 44, 46. How is that? Is that right now?

23 THE COURT: Don't leave.

24 (Side-bar conference took place.)

25 (Matter continued on the next page.)

1 Are you okay?

2 Are the alternates satisfactory to the defendants?

3 MR. ROSEN: Yes, Your Honor.

4 MR. ASHLEY: Yes, Your Honor.

5 THE COURT: Satisfactory to the government?

6 MR. SEIGEL: Yes, Your Honor.

7 (Matter continued on the next page.)

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1 (Open Court - Jury Present)

2 THE CLERK: Juror 39, you are juror alternate No. 1.
3 Juror No. 41, you are alternate No. 2. Juror No. 42, you are
4 alternate No. 3. Juror No. 48, you are alternate No. 4.

5 THE COURT: Ladies and gentlemen, I thank you for
6 your patience. Unless you want to stay with me, you may
7 leave.

8 (Whereupon the prospective jurors leave the
9 courtroom.)

10 MR. ROSEN: Judge, I would like to make an
11 application, in light of what has gone on here today.
12 Notwithstanding the quick selection of the jury, that Your
13 Honor give me some time before the opening. Apparently, Your
14 Honor is thinking of opening tomorrow.

15 THE COURT: Yes.

16 MR. ROSEN: I am making an application to have a day
17 or so before the options to get ready. I don't feel that I am
18 ready for the opening tomorrow.

19 THE COURT: I think an experienced trial lawyer, and
20 an excellent trial lawyer such as yourself, can do it.

21 How long your opening going to be, Mr. Siegel?

22 MR. SEIGEL: I would say 30 or 35 minutes.

23 THE COURT: Yours, Mr. Ashley?

24 MR. ASHLEY: The same.

25 MR. ROSEN: I don't know. I will try to do it in the

1 same time frame as my colleagues. The only thing I would like
2 to do, and it's very important at this time before the
3 openings, is there is a charge in our count of a conspiracy to
4 commit murder in aid of racketeering. I think we are entitled
5 before opening and before any problems exist with the
6 conspiracy charge, to have the government tell the Court and
7 counsel who are the co-conspirators besides the men on trial.

8 THE COURT: You already had discovery on that. Go
9 ahead, Mr. Seigel.

10 MR. SEIGEL: We are going to prove that they
11 conspired with others to do this. Those will be identified
12 through the course of the government's proof. I don't
13 understand what rule or case law he can cite to say that I
14 have to do that.

15 MR. ROSEN: United States versus Molicca, which I
16 just gave Your Honor. And that caused the reversal. The
17 Second Circuit reversed because of basically a change in
18 concept.

19 I am entitled to know who my client allegedly
20 conspired with before I open to a jury on this conspiracy
21 charge. I don't understand it's such a difficult thing.
22 Molicca is the case, when Your Honor reads it, which I am sure
23 you have and my colleagues will read it, a bill of particulars
24 was requested. My old adversary, Douglas Grover, he didn't
25 think it was necessary. Well, it was. So I think a

1 co-conspirators -- the names of the co-conspirators, I am
2 entitled to at this stage. The jury is sworn. Jeopardy is
3 attached.

4 THE COURT: I will read the case, and you will know
5 before you make your opening tomorrow.

6 MR. SEIGEL: Your Honor, I actually want to thank
7 Mr. Rosen, because he reminded me that there was a bill of
8 particulars motion in this case that asked for that and which
9 you denied. Again, we have submit that there is a basis to
10 ask for this at this point. He asked for it before and you
11 denied it.

12 THE COURT: I will still read the case, and I will
13 let you know.

14 MR. ASHLEY: Your Honor, very quickly. For the
15 record, I am handing Mr. Siegel the original of the documents
16 that I intend to offer as evidence in the case, along with a
17 document which is a copy of a document. That is all that I
18 have, is a copy.

19 MR. SEIGEL: Your Honor, we appreciate that, and we
20 will look at it. I just want to make the record clear that
21 unless there is an authenticating witness, we will object to
22 the introduction of this.

23 THE COURT: I will rule on it when I get to it.

24 MR. SEIGEL: I don't want to be seen as acquiescing
25 in the introduction.

1 MR. ASHLEY: I understand that, Your Honor. Your
2 Honor, if we get an order from the Court, my client can get
3 his suit at the MDC.

4 THE COURT: I just received this fax from you. When
5 you were talking about permitted to change into a formal
6 attire for the trial proceeding, who are you talking about?

7 MR. ASHLEY: I am talking about my client, Your
8 Honor, because he is incarcerated.

9 THE COURT: He have has clothes on.

10 MR. ASHLEY: Well, he does now. But the only way we
11 were to do it this morning, we brought the suits in to him
12 while he was being brought through the lobby of the courthouse
13 in his prison garb.

14 So if Your Honor signs that order, we can get his
15 clothes to him at night. He can come in without the prison
16 uniform on.

17 THE COURT: I don't know what the -- what are the
18 rules for the Bureau of Prisons? Do they allow clothes in
19 their, do you know?

20 THE DEFENDANT: They gave me a paper. I was told we
21 needed a court order.

22 MR. ASHLEY: That's right. We were told they would
23 do it, but they needed a court order. He can change in with a
24 court order but not without a court order.

25 THE COURT: Today's the 30th.

1 MR. ASHLEY: Yes, Your Honor.

2 THE COURT: Here Augie.

3 Did we get a note?

4 MR. ROSEN: I have two housekeeping things.

5 THE CLERK: No, Judge.

6 THE COURT: Go ahead.

7 MR. ROSEN: One is to partially modify Mr. DeRoss'
8 bail movement to allow him to stay -- haven't made the
9 reservation yet -- but near me so I can work with him at
10 night. He lives in Staten Island. I have to stay close to my
11 home.

12 THE COURT: You want to modify the bail conditions?

13 Rows rose: So that he can check into a hotel
14 somewhere near me, and I can work at night with him.

15 THE COURT: Where is that?

16 MR. ROSEN: Port Washington, Roslyn.

17 THE COURT: He is where?

18 MR. ROSEN: Staten Island.

19 THE COURT: But he has the Eastern District.

20 MR. SEIGEL: I think it might be more restrictive
21 than that. I have no objection to the modification.

22 MR. DEROSS: I have a curfew to be in by 9:00.

23 MR ROSEN: He has a curfew.

24 THE COURT: Prepare an order and I will sign it.

25 MR. ROSEN: I want him in Nassau County.

1 THE COURT: Nassau or Suffolk?

2 MR. ROSEN: Port Washington.

3 THE COURT: We have it on the record.

4 THE CLERK: He has electronic monitoring. They have
5 to hook it up to the phone in the court.

6 MR. ROSEN: We will talk to pretrial.

7 THE COURT: I authorized it. You can hook it up
8 with pretrial.

9 MR. ROSEN: Is there any chance we can start at
10 10:00 instead of 9:30?

11 THE COURT: I am here at 6:30.

12 MR. ROSEN: I'm up at 6:30 too. I am not breathing
13 at that hour, you know.

14 THE COURT: No. We will start 9:30. Ride them
15 hard and throw them away.

16 MR. SEIGEL: Judge, I want to raise one quick issue.
17 We have the case agent, James DeStefano, who will be at the
18 table with us. Agent Pontecorvo has worked in partnership
19 with him and with us on this case. We would like permission
20 to keep him in the courtroom with us, because he will be
21 testifying.

22 MR. ROSEN: Can we make a trade? They want
23 Pontecorvo. Can I have somebody help me?

24 MR. SEIGEL: Just not Mr. Froccaro.

25 MR. ROSEN: That is just not fair.

1 MR. SEIGEL: It's just a question of can a witness
2 who will be testifying be present in the courtroom.

3 MR. ROSEN: I want a fellow who is not testifying.

4 MR. ASHLEY: Now we will have two witnesses on
5 behalf of the government who are going to be in the courtroom
6 and testifying.

7 THE COURT: The answer is yes or no.

8 MR. ASHLEY: Well, I'd say no.

9 THE COURT: No.

10 MR. SEIGEL: Understood.

11 THE COURT: That is it. Now I have to go back to my
12 other jury.

13 (Time noted: 3:05 p.m.)
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WITNESSES:

PAGES:

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